

GENERAL TERMS AND CONDITIONS

- These General Terms and Conditions („GTC“) shall form an integral component of all contracts concluded between GfK Austria Ltd. („GfK“) and clients. GfK shall provide its services exclusively based on these GTC such that contrary declarations on the part of the contractual partner, perhaps referring to his own GTC, shall be deemed as not submitted and, accordingly, shall not become contractual components even if „GfK“ should not expressly oppose such contradictory declarations.
- The party signing on behalf of the client shall expressly declare that he is entitled to submit proposals and/or conclude this contract and/or, in the case of collective signing authorisation, is expressly empowered by one or the other executives to conclude this contract, such that this contract shall be concluded based on such empowerment when his sole signature is affixed thereto.
- The signing party shall expressly declare that the client has sufficient creditworthiness to fulfil the contract within the time stipulated and that corresponding financial resources shall be arranged in order to comply with the client's contractual obligations within the time stipulated.
- The contractually negotiated prices shall be derived exclusively from the written confirmation from „Get“, whereby handling charges, transport costs, etc. shall not be included, but rather invoiced separately. All „GfK“ prices are net and therefore include no taxes.
- The validity of our offers is 60 days from the quotation date.
- Contracts which the client does not completely fulfil within the calendar year of their conclusion shall be indexed to the 2005 Consumer Price Index (2005 CPI) or an index replacing the CPI, whereby the index figure for the month in which the contract is concluded shall be applied as a basis value. The prices shall increase or decrease in proportion to that in which the Consumer Price Index rises or falls in relation to the basis.
- 50% of the contractual sum for Ad Hoc Market Research products shall be invoiced immediately after contractual conclusion and the remainder shall be invoiced upon delivery. „GfK“ shall not begin to perform service until the initial instalment payment has been received, such that the payment of the initial instalment constitutes a precondition for „GfK“ performing its service.
- „GfK“ shall be entitled to submit partial invoices at its own discretion for contracts in which partial services are to be performed.
- All payments shall be due within a period of 10 days following receipt of invoice, without any deductions.
- If in arrears, the client shall be obligated to pay default interest of 8% above the basic interest rate applicable on the due-date. „GfK“ shall be entitled to assert claims for damages in excess thereof and to invoice dunning charges in the amount of € 50 for each reminder notice, whereby claiming higher collection expenses shall be deemed to be expressly agreed.
- „GfK“ shall be entitled but not obligated to avail itself of the right of retention up until the time of counter-performance.
- „GfK“ shall undertake to perform its services with the due diligence of a prudent businessman. Liability for merely slight negligence shall be precluded by mutual accord. The amount of liability on the part of „GfK“ for deficiencies attributable to „GfK“ shall be limited to the total sum of the negotiated annual fee for each individual order. There shall be no liability for consequential damage.
- The client must submit complaints of any deficiencies without delay and in writing; otherwise, he shall lose his entitlement to submit claims. The contractual parties shall agree by mutual accord that deficiencies are to be claimed only within a period of six months following release; otherwise, they shall be precluded, irrespective of whatever legal justification the customer bases them on. After the expiration of this period, the entitlement to assert claims shall be forfeit, such that no corresponding objections may be raised either.
- „GfK“ must remedy all deficiencies either by correcting or by replacing them. The client shall only be entitled to demand cancellation of contract or reduction in price if „GfK“ either refuses in writing without substantiation to effect correction or if a third attempt at correction is unsuccessful.
- On pain of losing his entitlement to assert claims, the client must inform „GfK“ without delay and in writing if the client is confronted with third-party warranty claims in connection with this contract.
- All copyrights in connection with performing the services shall remain with „Get“, unless expressly negotiated to the contrary and in writing in the contract. The client shall principally not be entitled to use or turn to account the data provided by „GfK“ for purposes other than those expressly contractually negotiated or within any other spatial, temporal and material scope. Passing on or otherwise using the data (e.g. for advertising, related products, etc.) even only in part shall be impermissible unless an express arrangement to the contrary is made in writing. All data carriers shall remain the property of „GfK“. Should the client infringe these provisions, he must effect payment to „GfK“ of a reasonable usage fee oriented to the fee negotiated in this contract. Furthermore, the client shall effect payment of a contractual penalty not subject to judicial mitigation in the amount of the negotiated annual fee for each individual order. „GfK“ shall expressly reserve the right to claim damages in excess thereof.
- „GfK“ must expressly be named as the author of any data the client processes further as contractually negotiated.
- „GfK“ shall be entitled to transfer the rights and obligations in connection with this contract to a third party, who shall then stand in the place of „GfK“ in this contract.
- „GfK“ shall undertake to keep confidential all data provided by the client and not to pass them on to third parties and to use them exclusively for implementing the order. However, „Get“ shall be entitled to apply the methodical and scientific experience of the investigation for its basis research. Such publication may not contain the Principal's name or other indications pointing toward the Principal's name, business or circumstances.
- The client shall not be entitled to set off any entitled claims against „GfK“ with claims arising in connection with this contract.
- „GM“ shall provide the client with the data in standardised data formats. The client must ensure that he has the requisite corresponding resources (technical resources in particular). The client may not derive any claims against „GfK“ in this connection on grounds of breach of obligation.
- The client acknowledges that „GfK“ performs its services within the framework of what is legally permissible only. Should the legal situation change, the client shall not be entitled to claim a fee reduction to the extent that individual (partial) services can no longer be performed due to a change in the legal situation. Should expenses increase due to a change in the legal situation, the client shall undertake to recompense „GfK“ for these expenses to a reasonable extent.
- „GM“ shall be entitled to electronically store and process data connected with this contract, the fulfilment thereof, and of which „Get“ learns. When processing the data, „GfK“ may also avail itself of other companies within the consolidated association and forward data accordingly.
- The client shall declare to provide „UK“ with data subject to the Data Protection Act for purposes of fulfilling the contractually negotiated purpose only if these data are not in contradiction to the justified interests of third parties. „GfK“ shall not be obligated to verify the permissibility of using such data. In this regard, the client shall indemnify „GfK“ for any and all third-party claims.
- This contract shall be exclusively subject to Austrian material law. Any and all jurisdictional reference standards to other jurisdictions shall not be applicable. The contractual parties shall agree on the exclusive jurisdiction of the court competent in rem, Vienna Inner City, for any and all disputes arising in connection with this contract, and the breach, dissolution or nullity thereof. „GfK“ shall also be entitled to assert claims within the client's general place of jurisdiction or other jurisdiction. Should the client's head offices be located in a country which has not ratified the Lugano Convention (Fed. Law Gaz. 1996/448) or the Brussels Treaty (EuGVU) (Fed. Law Gaz. III 1998/209, as amended) and if any execution of a ruling concerning this contract is not possible in accordance with this treaty, „GfK“ may also assert claims at its own discretion before an arbitration board. The contractual parties shall agree to the following clause for such a case: "Disputes arising in connection with this contract or the breach, dissolution or nullity thereof shall be definitively ruled upon in accordance with the Arbitration and Mediation Ordinance of the International Arbitration Board, Austrian Chamber of Commerce, Vienna (Vienna Rules) by three arbitrators appointed in accordance with these Rules. German shall be the language of arbitration. The application of Art. 595 Par. 1 Fig. 7 of the Austrian Code of Civil Procedure (CCP) is eschewed in accordance with Art. 598 Par. 2 of the CCP."
- Amendments and supplements to this contract and legally relevant declarations based on this contract must be made in writing. Waiver of this written-from requirement must also be made in writing.
- The client shall undertake to inform „GfK“ without delay and in writing of any change in his delivery address. Legally relevant declarations in connection with this contract must be delivered to the contractual partner's last known address. Delivery shall also be deemed to have been effected if the contractual partner has moved without giving his current address. The deadline periods in connection with this contract shall be deemed to have been complied with if the requisite declaration has demonstrably been mailed in the post or given to another delivery service on the last day of such deadline period.
- This contract reflects in its entirety the negotiation concluded between the contractual parties. By affixing their signatures to this contract, the contractual parties confirm that no arrangements have been made extending beyond this contract. Any and all arrangements, commitments or other statements made in connection with the subject of this contract prior to the signing thereof shall hereby become ineffective and inapplicable.
- The contractual parties are aware of the services to be reciprocally rendered and the value thereof in their entire scope. The contractual parties shall refrain from contesting this contract or raising corresponding judicial or out-of-court objections thereto, for whatever reason.
- Should individual provisions set out in this contract be or become ineffective, the remainder of the contract shall be unaffected thereby. Invalid or null provisions are to be interpreted such that their commercial and legal purposes are attained to the extent possible. Secondly, the contractual parties shall undertake to replace invalid provisions with valid ones which attain or come as close as possible to the intended legal and commercial purpose.

Special terms and conditions for „GM“ Panel research

The following provisions shall apply in addition to „GfK“ Panel research only.

- „GfK“ Panel research shall use all modern, scientifically recognised methods from the sectors of sociological, statistical, business administration and economics research sectors. „GfK“'s scientific basis research constantly leads to the development of new methods and procedures.
- In general, the fee shall encompass all „GfK“ services expressly negotiated in connection with implementing the order and shall include one report copy in German. Oral presentation of the results of the research work on the client's premises is to be expressly negotiated; otherwise, an additional fee for presentations shall be invoiced.
- Special wishes, requests for changes or addition on the client's part, additional copies of the report, additional costs not attributable to „GfK“ (e.g. increases in postage, etc.), costs of preparing translations and preliminary or interim reports shall be invoiced separately.
- The negotiated fee shall increase to the extent of the rise in the Consumer Price Index published by the Austrian Central Statistics Bureau.
- The investigation fees serve to finance the individual orders; for this reason, advance payment is required in general. The annual fee shall be due in four equal instalments, each at the beginning of a calendar quarter. Deviations therefrom must be regulated in the contract and/or list of specifications. All fees shall be payable at once following invoicing, net (i.e. without any deductions).
- Should the contract not be terminated by no later than three months before the end of a contractual year via registered letter received at „GfK“, the contract shall renew for a further year.
- „GfK“ shall reserve the right to make changes in the reports and information if, in „GfK“'s view, the panel service is improved thereby.
- In general, „GM“ cannot guarantee exclusivity for specific product fields, subjects or methods of investigation. Should exclusivity be expressly negotiated in substantiated exceptional cases, the duration and the fee to be additionally calculated must be established.
- All copyrights in connection with performing the services shall remain with „GfK“, unless expressly negotiated to the contrary and in writing in the contract. Accordingly, the client shall principally not be entitled to use or turn to account the data provided by „GfK“ for purposes other than those expressly contractually negotiated or within any other spatial, temporal and material scope. Passing on or otherwise using the data (e.g. for advertising, related products, etc.) even only in part shall be impermissible unless an express arrangement to the contrary is made in writing. All data carriers shall remain the property of „GfK“. Should the client infringe these provisions, he must effect payment to „GfK“ of a reasonable usage fee oriented to the fee negotiated in this contract. Furthermore, the client shall effect payment of a contractual penalty not subject to judicial mitigation in the amount of three times the negotiated fee for each individual order. „GfK“ shall expressly reserve the right to claim damages in excess thereof.
- Unless expressly negotiated otherwise, „GfK“ shall undertake to hold in safekeeping research documentation and data carriers for one and two years respectively after delivering the investigation report.