

GENERAL TERMS AND CONDITIONS

Energy Schweiz AG | Edition: June 2016



A. General Provisions.

1. Energy Schweiz.

- 1.1 The «Energy Schweiz Gruppe» consists of Energy Schweiz Holding AG, its subsidiaries Energy Schweiz AG and Energy Media AG (hereafter referred to together as «**Energy Schweiz**») and the radio stations associated therewith, Energy Zürich, Energy Bern and Energy Basel (hereafter referred to as «**Energy Stations**»). (Energy Schweiz and Energy Bern will hereafter together be referred to as «**Energy** »).
- 1.2 It is the intention of Energy Schweiz to increase the visibility of the brand Energy in Switzerland in an enduring fashion.
- 1.3 Energy Schweiz AG conducts, markets, promotes and/or organizes its own activities, performances, projects, Web sites, events, etc. as well as those of Energy and/or third parties («**services**» or «**productions**»), such undertakings being of an intermedia nature and utilizing all media channels (especially radio, online, mobile, print, and TV).
- 1.4 Energy Media AG markets the advertising time of each of the Energy Stations, other radio stations, and/or those of third parties.
- 1.5 Each subsidiary of Energy Schweiz and/or each of the Energy Stations acts on its own accord and is legally independent. Unless agreed to otherwise expressly and in writing, the company designated in a specific contract has exclusive responsibility and authority for fulfilling the contract. Energy Schweiz expressly excludes any corporate liability or liability based on a simple partnership.

2. Scope.

- 2.1 To the extent not agreed otherwise in writing, these General Terms and Conditions of Business of Energy Schweiz in their current version («**AGB**») supplemented by (i) the «**Energy Advertising Terms and Conditions**», the «**Energy Event Terms and Conditions**», and/or the «**Energy Contest Terms and Conditions**» have exclusive application to all services rendered, productions prepared, events, and contests of Energy and/or future additional group companies of Energy domiciled in Switzerland. The current version of these contractual conditions is published at www.energy.ch/agb. The general terms and conditions of business or other preformulated contractual conditions of customers or third parties only have application if Energy consents to them expressly and in writing.
- 2.2 In the case of conflicts between the Energy advertising terms and conditions/event terms and conditions/contest terms and conditions (hereafter referred to as «**Special Conditions**») on the one hand, and these AGB on the other hand, it is these Special Conditions that take precedence.

3. Writing Requirement.

- 3.1 All agreements between and statements of legal significance by contracting parties must be in writing in order to be valid. Electronic statements (email) meet the writing requirement.

4. Contract Conclusions.

- 4.1 Energy will send interested customers, business partners, suppliers, etc. (hereafter collectively referred to as «**Customers**») a written offer or draft contract for the preparation of certain productions or the rendering of certain services subject to these AGB after first having an initial personal meeting.

- 4.2 A contract is formed between Energy and Customer upon the written statement of Customer that the offer made by Energy is accepted (declaration of acceptance) or the receipt of a written order confirmation on the part of Energy by Customer.

- 4.3 Modifications by Customer to an offer made by Energy merely constitute a counter-offer to Energy. In this case, a contract is only included if there is written confirmation by Energy.

5. Offers.

Unless otherwise expressly agreed in writing, offers made by Energy (excepting apparent errors) are binding for 30 days.

6. Contract Rescission.

- 6.1 In certain justified cases Energy can - at its own discretion - grant Customer an opportunity to rescind up to 20 work days before the production/services are to begin. In any case, a request for contract rescission is to be sent in writing to the specific contracting party within Energy. Rescission is only effective if and as soon as Energy has expressly given agreement in writing.
- 6.2 Between 20 and 11 work days before start of the production/service a rescission on the part of Customer is in any case only possible upon providing damages in the amount of 50% of the net worth of the corresponding production/service (liquidated damages)
- 6.3 In the case of rescission before the last 10 work days before the start of production/services Customer is liable for the entire amount of damages if the production/service in question cannot be made up for within 8 weeks.
- 6.4 After acceptance/publication of the production in the sense of No. 13 AGB rescission of the contract is excluded.

7. Performance.

- 7.1 Services and productions will normally be rendered or prepared by the deadline put forth in the offer and/or contract.
- 7.2 Energy can reasonably extend the time period for fulfillment if:
 - (i) Specifications, contents, materials, etc. that are necessary for carrying out the services/productions are not received in a timely fashion by Energy, or these are subsequently modified by Customer,
 - (ii) Energy is not supplied by third parties in a timely or correct fashion or
 - (iii) Customer does not meet payment deadlines.
- 7.3 An extension of the time for performance based on the aforementioned reasons does not give rise to a claim for damages or a right to contract rescission on the part of Customer.

8. Conditions, Terms of Payment.

- 8.1 The prices agreed upon in the offer/order confirmation are determinative. The right to make adjustments based on changes in prices by third parties is reserved (e.g. costs for the external rendering of services, printing costs, fees and charges, etc.).
- 8.2 The prices agreed upon with Energy do not include VAT in the statutorily prescribed amount.
- 8.3 Energy invoices Customers based on the offer/order confirmation and the services rendered/productions accepted under these AGB.

- 8.4 Invoices are to be paid by Customer without deductions within 30 days of receipt of the invoice. 30 days after the invoice date Customer passes into default without further notice and owes Energy default interest in the amount of 5%.
- 8.5 If Customer defaults on payments Energy is also entitled to postpone and/or suspend further agreed-upon or initiated services or productions until payment of the invoice amount that is outstanding. In the case of publications published productions may be temporarily removed from their respective platforms.
- 8.6 In the case of new Customers, repeated default in payment, or large-scale projects Energy reserves the right to require an advance payment.
- 8.7 Payments made discharge obligations to Energy in the order that they were incurred.
- 8.8 A set-off against all possible claims/outstanding accounts of Customer against Energy is excluded.

9. Confidentiality.

- 9.1 Customer is obligated to treat information about Energy as well as about customers of Energy and their business that is obtained in connection with the conclusion and carrying out of collaboration with Energy that is received or that Customer is made aware of under other circumstances as a business or trade secret that is to be held confidential for an unlimited period of time and - to the extent not necessary to attain the purpose of the contract - neither to write such information down, nor to pass it on, nor to make use of it.

10. Data Protection.

- 10.1 Customer expressly agrees that Energy may store and process as needed data about Customer it receives in the context of the business relationship on Energy's servers. Customer data will be handled by Energy in accordance with the provision of the Swiss Data Protection Act and this data will be exclusively collected, processed and used for the purpose of contract performance. Such information will not be provided to third parties if and to the extent this is not necessary to fulfill the contract (e.g. ticketing). In particular, Energy takes reasonable precautions regarding data security but is not liable for damages (including loss of data). Moreover, the «Energy Data Protection Terms and Conditions» apply.

B. Services and Productions.

11. Use of Third Parties.

- 11.1 Energy is entitled to make use of external third parties in order to fulfill its contractual obligations (hereafter «auxiliary personnel»). Auxiliary personnel have no contractual relationship with Customer. In particular, they are exclusively auxiliary personnel of Energy in relation to Customer.
- 11.2 Energy is liable for the actions of auxiliary personnel, as if they were Energy's own actions.

12. The Duty of Customer to Provide Cooperation.

- 12.1 Customer makes available, at its own cost and risk, all necessary services, information, materials and rights that are necessary for undertaking services/productions. Customer guarantees that all necessary duties of cooperation will be carried out in a timely fashion and to the extent necessary.
- 12.2 In particular, Customer guarantees timely access to premises as needed and will take care to ensure that the responsible contact person is available.

- 12.3 Should Customer not fulfill its duty to cooperate in a timely, correct, or complete fashion, then Energy can request compensation for additional costs directly incurred as the result of delay and/or the absence of or incorrect performance for which Customer is demonstrably responsible.

13. Delivery and Acceptance of Production.

- 13.1 Energy informs Customer once productions have been completed and makes the production available for delivery in the agreed-upon form and at the agreed-upon location («**delivery**»).
- 13.2 If Customer is in agreement with the production, then Customer is to inform Energy that the production is approved for the agreed-upon publication/use/delivery («**approval**»). Energy confirms approvals that are only given orally by email. **Upon approval or without an express written notice of a defect in quality by Customer, within two work days after delivery the production is to be regarded as accepted by Customer («acceptance of delivery»).** In the case of live transmissions or other direct productions, the stage of acceptance of delivery is excluded.
- 13.3 In the case of objections based on defects, or a desire for adjustments or modifications in connection with acceptance of delivery, Energy will discuss the matters objected to with Customer (modifications/feasibility/adaptations) and will eliminate any defects it is responsible for.
- 13.4 If any of the modifications desired by Customer lead to significantly increased expenses (e.g. repeated shooting on location etc.) the carrying out of these modifications are to be discussed by Energy and Customer and are at Customer's cost.
- 13.5 In the case of modifications/adaptations the new acceptance of delivery is to take place in the same fashion as under 13.1 ff. above.

14. Intellectual Property Rights.

- 14.1 Once Customer has paid Energy the full agreed-upon compensation, Energy irrevocably transfers exclusive copyright that is not limited in regard to time, place and content, and all related property rights in the sense of the Copyright Act for any commissioned productions.
- 14.2 Upon conclusion of the contract Customer grants Energy the right, which is not limited as to time or place, to use the production for its own needs (e.g. as a reference production) and to publish in this context (if necessary in an abbreviated form) for, e.g. transmission over Energy's transmitters, on Energy's Web site, or as presentational films or videos (show reels).

15. Personality Rights, Property Rights, Release.

- 15.1 Customer guarantees to Energy that it is authorized to use for productions all of the content delivered to or designated to it by Customer for productions (subjects, brands, trading names, designs, music, etc.).
- 15.2 Customer is responsible for seeing that productions do not violate statutory provisions, third-party rights (e.g. intellectual property rights, other intangible property rights, claims of all types, property rights, and other in rem rights, as well as rights of personality) and do not offend common decency. If Energy nonetheless identifies content that is contrary to law, such productions can be removed without prior notice from portals and platforms.

15.3 Customer indemnifies Energy from any third-party claims (e.g. claims for removal or to block access, claims for damages, any other types of compensation payments, especially due to violation of assurances in the context of Nos. 15.1 and 15.2). Customer is liable to Energy for all damages incurred by Energy as a result of the foregoing. The liability includes, in addition to that in regard to third parties, any claims for damages based on judicial decisions including all costs incurred by Energy in connection with defending against these claims (attorneys' fees, court costs, etc.)

15.4 Customer is obligated to actively support Energy in conducting its defense against third-party claims. Energy is obligated not to acknowledge third-party claims without the consent of Customer either judicially or extra-judicially.

16. Warranty, Exclusion of Liability.

16.1 Energy is obligated to carry out its services/productions, in a careful, conscientious manner that reflects the current state of the art.

16.2 Energy in no way guarantees uninterrupted availability of Internet connections or other Internet services if these are relevant to the production/service.

16.3 In the case of complaints regarding a production itself the same provisions apply as those concerning acceptance of delivery of the production.

16.4 In the case of hidden defects or should the productions not be able to be used as provided for, then Customer is limited to a claim for subsequent improvement.

16.5 Energy is liable for all damages, regardless of the legal grounds therefor, only in the case of intent or gross negligence. Energy has no liability for indirect damages, consequential damages caused by defects, or lost profits if the liability is not based on gross negligence of organs of Energy or its auxiliary personnel. In any case liability, to the extent statutorily permissible, is limited to the amount of compensation paid to Energy.

C. Concluding Provisions.

17. Should individual provisions of these AGB be or become invalid, the validity of the remaining provisions remain unaffected. The contracting parties are obligated to replace the invalid rule with a valid one with a content that best reflects the intent and purpose of the parties in the invalid provision. The same applies to gaps.

18. Jurisdiction for all controversies arising out of these AGB as well as all transactions with Energy Schweiz and/or Energy Stations is the headquarters of Energy Schweiz AG.

19. Swiss law applies exclusively to the exclusion of provisions of international private law. In particular, the United Nations Convention on the International Sale of Goods of April 11, 1980 (SR 0.221.211.1) is also excluded.