

GfK Belgium – General Terms and Conditions



Date of issue: 01 December 2019

1. **General.** These General Terms and Conditions ("GTC") set forth the general terms and conditions of GfK Belgium NV, having its registered address at Arnould Nobelstraat 42, 3000 Leuven, Belgium and which is registered under No. 0447.797.629 RPR Leuven ("GfK").
2. **Applicability.**
 - 2.1 GfK may from time to time issue proposals, quotations or offers (each a "Proposal") to a legal person (such a legal person hereinafter referred to as "Customer") and enter into a written contract for GfK's provision of services to Customer (each such contract, a "Service Contract" as further defined below).
 - 2.2 Except to the extent specifically stated otherwise in the Proposal or the Service Contract, these GTC will govern the legal relationship between GfK and Customer in connection with any Proposal, and any Service Contract entered into at the issuance date of these GTC. To the extent of any conflict, these GTC will prevail over any other terms and conditions elsewhere in the Service Contract except if such other term or condition appears in the Service Contract under a heading "Specific Terms and Conditions" or bearing a similar legend, in which case the other term or condition will prevail.
 - 2.3 Any terms and conditions that Customer may customarily apply or otherwise put forward or include in any communication or documentation issued to GfK in connection with a Proposal, a request for services or a Service Contract (such as, for example, a purchase order) shall be deemed void and non-existent.
3. **Service Contract Formation.**
 - 3.1 Proposals are non-binding and are merely provided for Customer's evaluation and to facilitate the negotiation and conclusion of a Service Contract. A Service Contract is either a Proposal or a written form of contract in respect of which both Customer and GfK: (i) have signified their agreement by signing a copy thereof; or (ii) an authorized representative of each explicitly having affirmed agreement via electronic means (such as, for example, explicit affirmation via email).
 - 3.2 Where Customer and GfK entered into a framework contract pursuant to which one or more Services are separately or consecutively contracted for, each such contract for services shall constitute an individual Service Contract. Proposals and Service Contracts have no precedent value.
4. **Services.**
 - 4.1 GfK shall provide the services and produce the associated deliverables as described in the relevant Service Contract (the "Services") with due care and in a professional manner, using commercially reasonable efforts to meet the timelines specified therein. GfK will in any event be deemed to perform with due care and in a professional manner where GfK is providing the services materially in accordance with the EMOSAR guidelines and standards (such as those set forth in the ICC/ESOMAR International Code on Market and Social Research which can be consulted at or can be obtained from GfK upon request) to the extent such standards and guidelines are relevant and applicable to the Services ("Industry Standards"). Customer shall not prejudice GfK's ability to meet the Industry Standards.
 - 4.2 If, ongoing a Service Contract, Customer requests one or more changes to any aspect of the Services, such changes shall be effective only if agreed to by GfK in accordance with such change control procedure as may be specified in that Service Contract or, if not specified, pursuant to an amendment to that Service Contract.
 - 4.3 All services are quoted and provided in reliance upon Customer's properly performing its portion of responsibilities and obligations. Services and associated deliverables will be deemed acceptable upon delivery except to the extent Customer has notified GfK of any material shortcomings therein within ten (10) days following their delivery whereupon GfK shall be afforded a reasonable amount of time to correct such shortcomings.
 - 4.4 Services are performed using information and data as obtained from or through Customer, or third parties (e.g. survey respondents), or both. GfK has no control over the accuracy, completeness and timeliness of such information and data which, furthermore, may be gathered from sampling. Accordingly, and notwithstanding GfK having properly performed the Services, the Services' deliverables will be subject to statistical errors and such other errors as may be inherently associated with scientific data processing techniques. Specifically in relation to data gathered from consumer or household panels, Customer understands that reliability depends on various factors including the sampling size and number of reported purchases in the subject observation period. While the sample size may be large, the number of reported purchases may be low, resulting in fluctuations for specific categories. This may be particularly true where purchases are made less frequently and the observation period is relatively short such (e.g. a quarter).
 - 4.5 To validate and increase the reliability of the data and reported results GfK may use perform plausibility checks of and corrections of the raw data according to established procedure. This may include, as applicable: (i) correcting prices and quantities; (ii) deleting implausible or incomplete data sets; (iii) checking and correcting outliers (such as adjusting prices based on expert knowledge) and plausibility (such as matching discount brands with the relevant discount shop); (iv) adjusting implausible or incomplete data sets according to frequency distribution; (v) validating current results according to existing historical data and comparing statistical projection and raw data to finetune reporting. In addition, GfK may use benchmarking and adjustment techniques including, for example: (i) benchmarking the data with data and statistics available from governmental bodies or industry-recognized parties and using adjustment factors or additional weights; (ii) adjusting coverage gaps by using standardized factors and, as applicable, aggregating monitored time periods; (iii) validating and adapting the structure of households which already reported online to the perceived actual level of internet usage; (iv) using adjustment factors to compensate undercoverage or overcoverage of the panel, as previously identified by using external benchmarks.
5. **Charges.**
 - 5.1 Customer shall pay GfK the fees and charges specified in the Service Contract. In addition, and without prejudice to any specific limitations as may be explicitly set forth in the Service Contract, GfK will be entitled to invoice Customer for the reasonable out-of-pocket or incidental expenses incurred in connection with the Service Contract or Customer's failure to fulfill its responsibilities pursuant to the Service Contract ("Expenses"). Unless explicitly agreed otherwise in writing, such Expenses may include, but are not limited to, travel and travel time outside Belgium, or expenses incurred as a result of Customer's provision of untimely or incorrect information or materials, or expenses that could not reasonably be foreseen at the time the Service Contract was entered into or resulting from changes in legislation or events beyond GfK's reasonable control. GfK will, at Customer's request, provide reasonable evidence of the incurrence of such Expenses it invoices.
 - 5.2 All fees and charges are specified exclusive of any taxes or duties that may apply. GfK may add any such applicable taxes and duties onto the invoice and Customer shall pay the same.
- 5.3 GfK shall have the right to adjust the charges under any Service Contract as of January 1st of each calendar year using the following formula: $P1 = P0 \times (0.2 + 0.8 \times (S1/S0))$ where: (i) P1 is the new charge; (ii) P0 is the charge applicable at the commencement of the Service Contract; (iii) S0 is the Belgian health index as published by FOD Economy in Belgium for the month immediately prior to the commencement of the Service Contract; (iv) S1 is the Belgian health index as published by FOD Economy in Belgium for the month December immediately prior to the month January as of which indexation is applied.
6. **Invoicing.**
 - 6.1 To the extent the Service Contract would remain silent on the subject: Services rendered at fixed price with deliverables to be provided at the end will be invoiced for fifty percent (50%) on the formation of the Service Contract and the remaining fifty percent (50%) upon the earlier of the provision of the deliverables and the termination or expiration of the Service Contract; (ii) Services with deliverables that are provided on an interval- or periodic basis and for which the charges are specified accordingly (e.g. charges specified per quarter, or per cycle or wave), at the beginning of each such interval or period; (iii) Services rendered on time and material basis will be invoiced monthly in arrears of performance; (iv) Expenses may be invoiced as from incurrence.
 - 6.2 If Customer requires issuing a purchase order or reference to facilitate payment, then such requirement shall never be a condition precedent to the effectiveness of any Service Contract provided that GfK may delay initiating performance until receipt of such reference.
7. **Payment Terms.**
 - 7.1 All invoices are payable without offset within thirty (30) days from the invoice date. An invoice will be deemed fully accepted by Customer, unless Customer raised a bona fide dispute with GfK in writing within fourteen (14) calendar days from the invoice date.
 - 7.2 If Customer is in default of paying an amount when due: (i) the overdue amount shall bear interest at a rate of one (1%) per commenced month as of the original due date; (ii) GfK will be entitled to additionally invoice Customer the higher of fifty euro (50 EUR) and the amount equivalent to ten percent (10%) of the total, overdue amount; and (iii) provided such default continues for fifteen (15) days or more since the original due date, GfK may suspend, without liability of any kind, any further performance under the Service Contract to which the default relates. The foregoing is without prejudice to such other rights as GfK may have under the Service Contract or applicable law to be compensated for damages sustained and expenses incurred in connection with Customer defaulting payment.
8. **Term and Termination.**
 - 8.1 A Service Contract shall continue for the term specified therein. If no such term is specified, the Service Contract shall continue for the term required by GfK to complete the Services contemplated by it.
 - 8.2 Either party may terminate a Service Contract immediately upon written notice to the other party and without intervention of the courts if: (i) that other party is in material breach of that Service Contract and that breach is incapable of remedy or, if it is capable of remedy, fails to remedy it within thirty (30) days of receipt of notice requesting it do so; or (ii) that other party becomes insolvent, is adjudged bankrupt or becomes the subject of dissolution, liquidation or bankruptcy proceedings, or files for creditor protection or similar, or otherwise discontinues business; (iii) a Force Majeure Event continues as specified further down below in these GTC.
 - 8.3 Upon Customer terminating a Service Contract in whole or in part ongoing its term other than in accordance with the immediately preceding section 8.2, Customer shall be liable to pay GfK the following early termination charges as liquidated damages reflecting a reasonable measure of actual damages and not a penalty: (i) seventy-five percent (75%) of the total amount that would have been payable by Customer to GfK for the remainder of the Service Contract and the Services (or the relevant portion thereof if termination is partial) had it not been terminated; and (ii) any costs and expenses incurred by GfK in connection with such early termination (including, without limitation, any costs and expenses incurred by GfK for the cancellation or termination of any contracts and engagements with third parties in connection with the Services). The early termination charges specified above are in addition to any amounts that became due prior to the effective date of termination but which have not yet been paid by Customer as of that date, and Customer shall continue being liable for paying the same.
 - 8.4 Termination of a Service Contract shall not affect (i) any rights or obligations accrued prior to termination; (ii) the coming into force or the continuance into force of any provision thereof that expressly, by implication or by nature is intended to come into force or continue into force on or after such termination.
9. **Confidentiality.**
 - 9.1 Each party shall protect the other party's Confidential Information by using the same degree of care that it uses to protect the confidentiality of its own Confidential Information but in no event less than a reasonable degree of care. The term "Confidential Information" as used herein refers to information that is non-public and can reasonably be understood to be of a confidential nature. Without limiting the generality of the foregoing, any information and materials pertaining to any methodologies and procedures owned or employed by or on behalf of GfK and any reports issued by or on behalf of GfK in connection with the Services will in any event be deemed GfK Confidential Information.
 - 9.2 A party may disclose the other party's Confidential Information only to the extent specifically authorized by such other party in writing or required by law or court order. In the event GfK would authorize Customer citing or publishing the results of the Services, in whole or in part, Customer shall exercise due care and diligence to ensure that the citation or publication of such results is accurate, not distorted and not misleading, and that Customer does not make or include any prejudicial or pejorative reference to GfK, or any of its affiliates, or any of their respective representatives, employees or agents, or any third party participant in the Services (such as, as the case may be, a survey respondent). In any such publication, Customer must also properly identify GfK as the author of such results.
10. **Customer General Responsibilities**
 - 10.1 Customer shall perform its portion of responsibilities, those as generally described in the Service Contract and those as they may arise under or pursuant to Industry Standards, in a professional manner and shall not withhold or unduly delay providing such information, materials and assistance as may be necessary, or as GfK may reasonably request, in connection with the Services. Customer shall use commercially reasonable efforts to ensure that any such information and materials are accurate and relevant.
 - 10.2 In connection with the Services, GfK may provide Customer (or Customer's designated representatives) with access and credentials (each a "Credential") to log on or log in to one or more portals or interfaces (each an "Interface"). Any such

- Credentials and User Interfaces are provided solely for Customer's use with the relevant Services. Customer shall keep each Credential save from unauthorized use and disclosure. Customer shall be solely responsible for the use (or failure to make authorized use) of a Credential and Interface. Use of an Interface may be subject to additional terms and conditions as may be stated in the relevant Service Contract or on such Interface at logon, or available upon request from GfK. Customer will be deemed to have agreed to and accepted any such additional terms and conditions on behalf of itself and each person to whom a Credential was issued.
- 10.3 GfK reserves the right to suspend any Credential or otherwise disable Customer's access to an Interface in whole or in part in any of the following events: (i) Customer (or a Customer authorized user) is in breach of the terms and conditions of the relevant Service Contract; or (ii) GfK reasonably suspects that the continued use or access may cause damage or disruption to the systems, or operations or reputation of GfK; (iii) if GfK RT is compelled to do so by applicable law or pursuant to a court or administrative order.
- 11. Product Tests.**
- 11.1 A Service Contract may contemplate or involve the storage, handling, mounting, consumption, testing, analysis and/or evaluation (any of the foregoing, individually and collectively, "Product Tests") of any product or product samples or components (each a "Product") on the request of Customer. In such instance, Customer represents and warrants that (i) it has and will maintain any required certifications, homologations, permits, rights and licenses as may be necessary to be given by any third party (including, without limitation, any governmental authority) with regard to each such Product and subject the same to the Product Tests (each a "Permit"); (ii) each Product is and will continue to be safe and suitable for the Product Tests; (iii) any specifications or procedures relevant to the Product Tests provided by Customer do not infringe upon any Permit; (iv) it will timely provide GfK with such Product-related information as is required or necessary to allow the Product Tests to be properly performed and any GfK member of staff and relevant third party participating in the Product Tests to be duly informed.
- 11.2 Customer shall indemnify and hold harmless GfK and GfK's affiliates (and any of their respective officers, directors, employees, representatives, agents and contractors) as well as any third party participating, directly or indirectly, in the Product Tests from and against all damages, sanctions, penalties, actual or threatened claims, losses and expenses that each may sustain or incur and that result, directly or indirectly, out of Customer's breach of any of the foregoing representations and warranties. Any such breach will be deemed a material breach incapable of remedy.
- 11.3 Customer shall ensure that its representatives, agents and contractors conduct themselves always in a respectful manner vis-à-vis any third party participating in Product Tests.
- 11.4 If, in connection with the Product Tests, the Product is put in GfK's custody or under its control, GfK shall exercise reasonable care to protect such Product from theft, accidental loss or damage while under its custody or control. However, GfK does not accept any liability whatsoever for any theft, loss or damage to a Product and it will be up to Customer to insure such Product as Customer deems fit.
- 12. Limitation of Liability.**
- 12.1 GfK shall not be liable for any indirect or consequential damages, nor for any loss of business, loss or corruption of data, loss of profits or goodwill. GfK's liability shall be limited to proven damages directly and immediately resulting from GfK's gross negligence or repeated slight negligence, and shall be limited to the equivalent of (i) if the liability does not arise under a Service Contract, one thousand euro (1.000 EUR); and (ii) if the liability arises in connection with a Service Contract, seventy-five percent (75%) of the amount payable by Customer in respect of the particular Services giving rise to the liability under that Service Contract, and (iii) in the aggregate over any period of twelve months and across all Proposals and Service Contracts taken together, one hundred thousand Euro (100.000 EUR). The foregoing limitation shall not apply in respect of bodily harm or death to the extent caused or contributed by GfK's negligence, or in the event of GfK's intentional misconduct, or otherwise in respect of liability that cannot be limited under mandatory law.
- 12.2 GfK does not accept any responsibility or liability for any damages, losses or expenses incurred, directly or indirectly, in connection with the use (including any decision made, or any action taken or not taken), inability to use, interpretation of or reliance upon, any report, analysis or other information and materials relevant to the results of the Services provided by GfK.
- 12.3 All claims against GfK will be deemed forfeited by Customer and will immediately cease to exist one (1) year after the event giving rise to the claim has first arisen.
- 12.4 The foregoing provisions limiting GfK's liability are without prejudice to such further limitations as to GfK's liability as may be set forth elsewhere and all such provisions are intended to be enforceable to the maximum extent permitted by law.
- 13. IPR.**
- 13.1 As between GfK and Customer, GfK shall own and continue to own any and all patents, registered and unregistered designs, copyrights, database rights, trademarks and all other intellectual property rights now known or hereafter recognized in any jurisdiction (individually and collectively, "IPR") in or relating to each of GfK's business, products, services, Marks, Methodology and Materials (including any derivatives of and improvements to any of the foregoing) irrespective of such IPR coming into existence (i) before, during or after the Proposal or Service Contract; and (ii) as a result of GfK's performance under a Service Contract or otherwise. "Marks" as used herein means any marks and indicia used by GfK to identify or refer GfK, its business, products or services. "Methodology" as used herein means any methodology, know-how and trade secrets, practices and procedures (including, without limitation, any descriptions of any of the foregoing) owned, created or used by GfK (other than pursuant to a license from Customer). "Materials" as used herein means any questionnaires and surveys, interfaces, tools and templates owned, created or used by GfK (other than pursuant to a license from Customer), including any information and data as may be contained therein or prepared, gathered or processed as part of the Services or for the purposes of producing the Services' deliverables (other than any raw data originating from and as provided by Customer to GfK).
- 13.2 Without prejudice to the foregoing, subject to Customer's payment of all amounts due under the Service Contract, Customer shall have a royalty-free and nontransferable right to use, for its internal corporate purposes only any copies of written reports, analysis or other documents or files specified as a deliverable under the Service Contract ("Reports").
- 13.3 Without prejudice to Customer's confidentiality obligations, Customer may not, without GfK's prior specific written consent, Customer may not share any such Report in whole or in part with any third party (including, without limitation, Customer's affiliates), whether for free or otherwise.
- 13.4 Where a Service Contract would refer to Customer owning a Report, such ownership shall not be deemed to refer to IPR (which GfK will continue to own) but rather only to the ownership of the tangible or electronic copy of that Report as provided by GfK.
- 13.5 Reports are, at least in part, based on GfK's Methodology and will always include GfK Materials, and will always be deemed to constitute confidential information of GfK and may thus not be disclosed by Customer except to the extent specifically authorized by GfK in writing or required by law or court order. Customer hereby grants GfK and any of GfK's affiliated companies a non-exclusive, royalty-free, worldwide, perpetual, irrevocable, sub-licensable, and transferable license and right to: (i) collect, use, copy, transmit, aggregate, anonymize, process, display and create derivative works of any information and data originating from or concerning Customer to the extent necessary or useful for the purposes of GfK providing the Services; and (ii) in Anonymized form only, collect, use, copy, transmit, process, display, publish and create derivative works of in any manner and for any purpose whatsoever (including, without limitation, to develop, provide, maintain, expand and improve GfK's and GfK's affiliates' products, services and knowledge). "Anonymized" as used herein means put in a form, through aggregation or otherwise, that does not personally identify Customer.
- 14. Data Privacy.**
- 14.1 Each party shall comply with the relevant legislation and regulation concerning the protection of personally identifiable information.
- 14.2 Customer acknowledges that, by virtue of a Proposal or Service Contract, GfK may receive personal information from or through Customer or obtain such information on behalf of Customer (each person so identifiable a "personal data subject"), including data that is protected as "personal information" under applicable privacy regulations ("Applicable Privacy Laws"). Customer agrees that GfK and its affiliates (and their respective service providers) may store, process and use any such personal data for all purposes reasonably connected with any or all of the following: (i) the business relationship between Customer and GfK; (ii) performance, administration, management or enforcement of a Service Contract and the Services provided pursuant to it; (iii) compliance with applicable law or a court or administrative order; (iv) preventing or remediating, if any, fraud, misuse or illegal activities; (v) communicating with Customer or its representatives about GfK's or any of its affiliates' products and services. Customer, on its own behalf and that of each personal data subject, agrees that GfK and its affiliates (and their respective service providers) may, in connection with the aforementioned purposes, transfer such data to and from jurisdictions in and outside the European Economic Area (EEA), including jurisdictions that do not provide levels of protection deemed equivalent under the Applicable Privacy Laws. Notwithstanding, in the latter case, GfK shall not do so unless it has obtained contract partner's prior written consent to do so or has put in place such mechanisms as may be approved or endorsed from time to time by the relevant regulator. Customer represents and warrants that it has obtained or will timely obtain all consents required (including that of the personal data subjects) to allow the storing, processing, using and transferring of the personal data, as described above and agrees to indemnify GfK and its affiliates in case of breach of that representation or warranty.
- 15. Amendments or Waiver.** No provision of these GTC or a Service Contract may be amended unless both parties have signified their agreement by signing a copy of such amendment, or an authorized representative of each party having explicitly affirmed agreement via electronic means (such as, for example, explicit affirmation via email). A waiver of a right shall be effective and deemed granted only if and to the extent such waiver is made in writing and signed by an authorized representative of the party granting it.
- 16. Force Majeure Event.** Neither GfK, nor Customer will be liable for any failure or delay in performing its obligations (other than a payment obligation) to the extent such performance is prevented, hindered or delayed by reason of any event beyond its reasonable control (each a "Force Majeure Event") such as, but not limited to, any act of God, war or terrorism, disruption of any third party information- or telecommunication networks or services, software bugs or defects, any acts or omissions of any governmental authority, a change in the law or interpretation thereof, and any failure of any third party on which GfK is, in whole or in part and for whatever reason, dependent to perform the Services or produce the deliverables (such as, for example, survey respondents). The party affected by a Force Majeure Event shall inform the other party of the same as soon as reasonably practicable under the circumstances. In the event a Force Majeure Event persists for one (1) month or more, either party may terminate the relevant Service Contract (or, if the Force Majeure Event only affects a portion of the Services, the relevant portion of the Service Contract) upon written notice to the other, following which no party shall have any liability to the other than that which accrued prior to the termination.
- 17. Severability.** Sections and headings inserted in these GTC or a Service Contract are for convenience only and do not, limit or define the substance of any provision contained herein, or affect in any way the interpretation of these GTC or the Service Contract. If any provision in these GTC, or a Service Contract, is held to be invalid or unenforceable under applicable law, the validity and enforceability of any other provision shall not be affected and the invalid or unenforceable provision shall be deemed replaced with one in legal and economical substance as near as possible to the original provision.
- 18. Assignment and Subcontracting.** Neither party may assign or transfer, in whole or in part, any of its rights or obligations without the other party's written consent, such consent not to be unreasonably withheld or delayed. GfK may use the resources of Affiliates and may engage subcontractors in performance of a Service Contract it being understood that GfK shall not be relieved from its obligations because of such use or subcontractors.
- 19. Notice.** Any notice required or permitted to be given in relation to GfK or a Service Contract shall be served to GfK and Customer at, respectively: (i) Customer's registered or principal place of business address last known to GfK; and (ii) GfK's registered office, at the time notice is served. Notice shall be served via registered letter or at such email address GfK or Customer may specifically designate to one another for such purpose via notice or in the Service Contract. A notice shall have effect upon receipt unless a later date is specified in it.
- 20. Governing Law and Jurisdiction.** These GTC and any Service Contract shall be construed, interpreted and enforced in accordance with the laws of Belgium, exclusive of any conflict of law rules or provisions. The competent courts located in the judicial district where GfK has its registered office shall have exclusive jurisdiction in respect of any and all disputes and claims arising from or related in any way to these GTC or any Service Contract. Prior to referring to a court of law, the parties shall make good faith efforts to amicably resolve any dispute and claim.

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