

## General Terms and Conditions – Consulting Services

### 1 Scope

- 1.1 These General Terms and Conditions (the “GTCs”) shall exclusively govern any agreements between Octopus Cloud AG, Baarerstrasse 145, CH-6300 Zug, Switzerland (“Octopus Cloud”) and Customer with regard to consulting services Octopus Cloud will provide to Customer.
- 1.2 These GTCs will apply to all statements of works entered between Octopus Cloud and the Customer regarding Services (each an “SoW”), even if such SoWs do not explicitly refer to these GTCs. No Customer standard agreements, general terms nor terms contained in similar documents provided by Customer (such as purchase orders) shall be applicable to Services provided by Octopus Cloud.
- 1.3 Except as expressly set forth in these GTCs and/or the relevant SoW, in the event of any conflict or inconsistency between the GTCs and any SoW, the terms of the SoW shall prevail and govern.

### 2 Definitions

- 2.1 **Affiliate** means, with respect to an entity, any other entity that, directly or indirectly, Controls, is Controlled by, or is under common control with such entity from time to time but only for so long as such Control exists. “Control” and its grammatical variants for the purpose of this definition means, (i) a general partnership interest in a partnership, (ii) the beneficial ownership of a majority of the outstanding equity entitled to vote for directors, or (iii) the power to direct or cause the direction of the management and policies of such entity whether by contract or otherwise.
- 2.2 **Confidential Information** means all information, documents, records, and/or data which the disclosing Party at the time of disclosure has designated to be confidential or which, given its nature and circumstances of disclosure, ought to reasonably be considered confidential. Information is not considered Confidential Information in the event the information in question
  - a. is approved for public release by written agreement of the discloser;
  - b. is already rightfully known to the recipient free of any restriction at the time it is obtained from the disclosing Party;
  - c. is subsequently disclosed to the recipient lawfully by a third party without imposing any restrictions whatsoever;
  - d. is or becomes public knowledge: or

- e. is developed independently by one Party without referring to Confidential Information belonging to the other Party.

- 2.2.1 **GTCs** means the present General Terms and Conditions.
- 2.3 **Official Price List** means the then-current rate card and expense policy regarding consulting and similar services that Octopus Cloud does officially communicate and publish. The Official Price List in its then-current version is an integral part of the relevant SoW.
- 2.4 **SoW** means a consulting agreement between the Parties which is made pursuant to these GTCs. The SoWs will contain all relevant details such as a description of the Services, allocated resources, time schedule, place of performance, applicable fees, duration of engagement, etc.
- 2.5 **Pre-Existing Material of Octopus Cloud** means materials, data, developments, inventions, trademarks or other intellectual property of Octopus Cloud created or acquired outside of the provision of Services, including any further developments, amendments, or enhancements thereof. Any such material, if relevant in connection with the Services, will be subject to separate agreements.
- 2.6 **Services** mean the consulting services (i.e. services under a mandate as per Articles 401 ff. of the Swiss Code of Obligations) Octopus Cloud is providing to Customer as per the relevant SoW.

### 3 Obligations of Octopus Cloud

- 3.1 Octopus Cloud shall be under the obligation to perform the Services as specified in the relevant SoW.
- 3.2 Octopus Cloud shall provide its Services remotely from the place it has its registered offices. Upon Customer request or if required due to the nature of the Service or any portion thereof, Octopus Cloud resources will provide the Services at the Customer’s premises identified in the relevant SoW.
- 3.3 The time schedules and milestones specified in a SoW shall only operate as binding due and delivery dates if explicitly identified as such in the relevant SoW.

### 4 General Obligations of Customer

- 4.1 Customer undertakes to in a timely manner take all necessary and useful actions, preparations, and/or precautions that can reasonably be expected from Customer in order to enable Octopus Cloud to meet its obligations under these GTCs and the relevant SoW. This will include (but not be limited to) (i) the Customer being responsible for and preparing all information, documents and other data Octopus Cloud reasonably requires in a timely, complete and accurate manner; (ii) the Customer

granting Octopus Cloud access to its key and other resources, premises, infrastructure (such as access to sufficiently equipped office space, communication infrastructure and Customer's systems) and information or data as may be reasonably required by Octopus Cloud to provide the stipulated Services.

- 4.2 If Customer fails to perform its advance performance obligations or should otherwise cause delays to envisaged time schedule of the Service in question, Octopus Cloud shall be entitled to invoice (i) all additional efforts Octopus Cloud incurs as a consequence of any such circumstances; (ii) for resources planned and originally scheduled to, for the duration of the delay, work on the specific project if and to the extent such resource cannot reasonably be allocated to another project or client. In any such case, Octopus Cloud reserves the right to claim additional damage subject to the limitation and exclusions specified in section 7.

## **5 Fees & Invoicing**

- 5.1 Octopus Cloud will (i) provide its Services either on a time and material basis at the rates specified in the Official Price List or on a fixed price basis; (ii) invoice Customer for all documented travel and other expenses reasonably incurred when providing the Services. Further details are specified in the relevant SoW.
- 5.2 With regard to Services on a time and material basis, Octopus Cloud will invoice Customer on a monthly basis for the Services provided based on the timesheets submitted to Customer. An upfront payment may apply if so specified in the relevant SoW.
- 5.3 If the Services are being provided on a fixed price basis, the payment schedule defined in the relevant SoW shall apply. In the absence of any such payment schedule, Octopus Cloud shall invoice forty percent (40%) of the fixed price immediately after execution of the relevant SoW and sixty percent (60%) of the fixed fee upon completion of the Service.
- 5.4 Unless specified otherwise in the relevant SoW, all of Octopus Cloud's fees and rates specified in the SoWs and/or other documentation are in Swiss Francs (CHF) and do, not include travel and other reasonable expenses and are exclusive of VAT and other applicable taxes. Unless specified otherwise, travel time incurred by Octopus Cloud staff traveling to Customer's premises (see section 3.2) shall be invoiced as working time at fifty percent (50%) of the applicable hourly rate for the relevant individual.
- 5.5 All Octopus Cloud invoices shall become due for payment within fourteen (14) days as from the date of receipt of the invoice - if Customer fails to pay any amount invoiced and not subject to a good faith dispute within that period of

time, Customer shall be considered in default without further payment reminder from Octopus Cloud.

- 5.6 If Customer disagrees with an invoice submitted by Octopus Cloud or any portion thereof, Customer will immediately notify Octopus Cloud accordingly in writing.
- 5.7 In case an undisputed amount of the fees charged remains unpaid, Octopus Cloud shall be entitled to charge Customer late payment interests at the standard rate specified in the Swiss Code of Obligations, calculated as from the date Customer is in payment default.

## **6 Warranties**

- 6.1 Octopus Cloud will perform the Services as specified in the applicable SoW faithfully and with due care.
- 6.2 Octopus Cloud and Customer each represent and warrant that they have all necessary rights and full authority to enter into the relevant SoWs and to perform their respective obligations under such arrangements without violating or infringing any third-party rights.

## **7 Liability**

- 7.1 Irrespective of the legal grounds for such claim, neither Octopus Cloud nor its Affiliates shall, except as provided below, be liable to the Customer and/or its Affiliates for (i) damages caused to the other Party as a result of slight negligence; (ii) any acts or omission and/or any act or omission by its auxiliary persons and/or subcontractors, agents or other authorized third parties; and (iii) any indirect or consequential, exemplary, punitive or special damages or other damages or losses of profit, etc. of any kind whatsoever or for loss of or recovery of data, or any damages caused by corrupt or inadequate data, defects, viruses, poor data quality, omissions or inaccuracies in data arising out of or in connection with the Services.
- 7.2 The exclusions and limitations set forth above shall not apply:
- to claims and/or losses based on death and/or personal injury;
  - to claims and/or losses based on Octopus Cloud's gross negligence and/or willful misconduct;
  - to claims and/or losses based on the fraudulent misrepresentation;
  - if and to the extent such limitation or exclusion is not permitted by applicable law.
- 7.3 Neither Party shall be liable nor be deemed in default for any delay and/or failure in performance of its obligations under any SoW to the extent such failure and/or delay is the result of causes that are not foreseeable, beyond its reasonable control and without negligence of the Party with respect to whose obligations such delay and/or failure in performance has occurred ("Force Majeure"), provided that the non-performing and/or delayed Party could not have prevented the failure or delay in performance of its obligations by using reasonable precautions. The Party

affected by an event of Force Majeure, upon giving prompt notice to the other Party, shall be excused from performance of its obligations related to the relevant SoW on a day-to-day basis only to the extent of such prevention, restriction or interference and provided that the Party so affected shall use its commercially reasonable efforts to avoid or remove such cause of non- or late performance and to minimize the consequences thereof and both Parties shall resume performance hereunder forthwith upon removal of such cause.

## **8 Confidentiality**

- 8.1 Each Party shall keep Confidential Information of the disclosing Party in strict confidence and shall safeguard such Confidential Information from unauthorized disclosure, reproduction or use no less rigorously than the stricter of the standards that would apply to its own Confidential Information of similar nature and the standards required by applicable law and regulatory requirements.
- 8.2 Both Parties agree not to disclose Confidential Information to any third parties without the other Party's prior written consent. However, both Parties shall be entitled to on a "need-to-know" basis share Confidential Information without prior written consent of the other Party (i) with employees, subcontractors and/or other third parties to the extent such individuals need to know such Confidential Information in connection with the performance of rights and obligations as per this GTCs and/or the relevant SoW; and (ii) with a third party which is to perform legal, accounting or audit services for or in relation to a Party in assessing its business operations. For the avoidance of doubt, such disclosure shall only be permitted to the extent any such individual is subject to professional secrecy provisions or contractual confidentiality obligations no less rigorously than those contained herein.
- 8.3 Except as otherwise provided herein, a Party may disclose the Confidential Information of the other Party to the extent, but only to the extent, required by law, regulation, rule, act, order, or request of any court, governmental authority or agency, self-regulatory organization or exchange, including but not limited to any subpoena, civil investigative demand, or discovery request or demand, provided such Party gives the other Party (to the extent not prohibited from doing so) prompt written notice and cooperation in seeking to limit the disclosure to the greatest extent possible, consistent with the legal obligations of the Party required to disclose the Confidential Information, and in obtaining confidential treatment for such information, if available.
- 8.4 Each Party shall immediately notify the other Party if it becomes aware of
  - a. any potential disclosure, access to or use of any Confidential Information in breach of this section 8;

- b. any unauthorized intrusion into systems containing Confidential Information; and
- c. any disclosure of any Confidential Information where the purpose of such disclosure does not have any apparent correlation with the execution of these GTCs and/or the relevant SoW.

Both Parties will give reasonable assistance to the other in order to prevent such breach of confidentiality and/or limit the consequences thereof.

- 8.5 The confidentiality obligations specified in this section 8 will continue to apply even after termination or expiration the relevant SoW.

## **9 Intellectual Property**

- 9.1 Except to the extent that deliverables resulting from the Services performed by Octopus Cloud under an SoW, if any, may incorporate any Pre-Existing Material of Octopus Cloud or use Octopus Cloud products, any such deliverables shall be the sole and exclusive property of Customer, and Octopus Cloud shall gain no rights therein, except as may be required for Octopus Cloud to perform its Services. However, and unless specified otherwise, Octopus Cloud shall retain an irrevocable, worldwide, perpetual, non-exclusive, fully paid-up license to use, reproduce, display, perform, distribute, sublicense, and create derivative works of any such deliverables, always provided that Octopus Cloud continues to comply with its confidentiality obligations under these GTCs.
- 9.2 Both Parties shall be entirely free to use any know-how, processes and/or methods related to or basis of any Service deliverables if and to the extent such items are not subject to intellectual property protection.
- 9.3 All intellectual property rights in Pre-Existing Material of Octopus Cloud and any Octopus Cloud standard products remain reserved. Any such Octopus Cloud products are subject to separate product subscription or license agreements.

## **10 Term and Termination of SoWs**

- 10.1 A SoW enters into force when duly signed and executed by both Parties. If the SoW is entered for a specific term, such term shall be specified in the relevant SoW.
- 10.2 Either Party may terminate a SoW at any point in time by submitting a written termination notice to the other Party at least two (2) months prior to the envisaged termination date. The Parties agree that any termination of an SoW by Customer, which is not subject to section 10.3 and becomes effective at a point in time before Octopus Cloud can reasonably downsize its engagement in the affected project and reallocate its resources to projects with other clients shall be deemed an inopportune termination as per Article 404 section 2 of the Swiss Code of Obligations, it being understood that in the opinion of the Parties such reasonable downsizing period under normal circumstances is two (2) months. In any such case, Customer shall be

liable to pay to Octopus Cloud the fees that would have accrued during such two (2) month period.

- 10.3 Notwithstanding any of the provisions of these GTCs and the relevant SoW, a SoW may be terminated by either Party at any time and with immediate effect by issuing a written notice to the other Party
- a. upon material and persistent breach of these GTCs and/or the relevant SoW in such manner, that the terminating Party may not reasonably be expected to continue to be bound to the SoW in question, provided however that the Party in breach has failed to remedy such breach within a reasonable period of time after receipt of a written notice specifying the nature of the breach. A Party may refrain from granting a reasonable period for remedy if and to the extent such breach from an objective point of view is not reasonably to be considered capable of remedy;
  - b. in the event of insolvency of the other Party as well as the initiation of bankruptcy proceedings, a moratorium on debt enforcement or similar proceedings (including rejection thereof due to lack of assets) against the other Party.

## **11 Marketing**

- 11.1 Octopus Cloud shall, upon prior consent from Customer, be entitled to (i) use Customer's name as a reference, be it orally or in any written publication no matter in what form or media (such as Octopus Cloud's customer reference lists on its website and sales presentations); (ii) upon prior consultation with Customer use Customer to elaborate and publish a customer success story, customer interview or similar marketing vehicle.
- 11.2 For the sole purpose of the marketing initiatives described above, Octopus Cloud shall hereby be authorized to use Customer's trademarks, brand names, logos and other words and symbols, it being understood that any such use shall be in compliance with Customer's branding and similar guidelines communicated to Octopus Cloud in writing.

## **12 Miscellaneous**

- 12.1 No SoW shall constitute or be deemed to constitute between the Parties a joint venture, partnership, employment relationship or staff loaning.
- 12.2 Customer shall not assign any SoW or delegate any of its rights, duties or obligations thereunder without the prior

written consent of Octopus Cloud. Octopus Cloud may assign a SoW or its rights, interests and obligations thereunder to (i) Affiliates; and/or (ii) another party in connection with a merger with or acquisition by or sale of all its assets. Any SoW shall be binding upon any successor in interest or title of the Parties.

- 12.3 Octopus Cloud is entitled to with regard to the fulfillment of its obligations related to the Services provided under any SoW contract with and use subcontractors, agents and other authorized third parties.
- 12.4 If any provision of these GTCs and/or a SoW is for any reason held to be invalid, illegal or unenforceable, the remaining provisions shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a valid, legal and enforceable provision that to the highest extent reasonably possible achieves the original intention of the Parties. This section shall apply accordingly if these GTCs and/or the relevant SoW remain silent on an issue to be resolved.
- 12.5 Additions, modifications, supplements and/or amendments to these GTCs and/or a particular SoW (including this section 12.5) may, unless specified otherwise, only be made in writing and if authorized by both Parties.
- 12.6 At no time shall any failure or delay by either Party in enforcing any provisions, exercising any option, or requiring performance of any provisions, be construed to be a waiver of same.

## **13 Governing Law and Forum**

- 13.1 These GTCs and all SoWs thereunder shall exclusively be governed and construed in accordance with the substantive laws of Switzerland, whereby (i) international conventions, including the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) and/or (ii) standard conflict of law rules are hereby excluded from application to these GTCs and/or any SoW.
- 13.2 The ordinary courts of the Canton of Zug shall have exclusive jurisdiction with regard to all disputes arising from or in connection with these GTCs and/or any SoW concluded thereunder. The place of jurisdiction is Zug/Switzerland.