

# KENDRIS

## GENERAL TERMS AND CONDITIONS

### 1. SCOPE OF APPLICATION

These general terms and conditions (KENDRIS Group GTC) set out herein apply to all contractual arrangements between the KENDRIS group entities (hereafter each individually and jointly referred to as KENDRIS) and its clients. These terms apply in the absence of separate GTCs, and other express, written agreements and to the extent that they do not conflict with mandatory applicable law.

General terms and conditions of clients are not applicable unless they have been accepted expressly and in writing by KENDRIS either for governing the relationship in general or for a specific arrangement.

### 2. SCOPE AND PERFORMANCE OF THE AGREEMENT

The subject matter of the agreement is the provision of agreed services and not of a particular economic result. The specific scope and performance of the work to be performed by KENDRIS is to be determined in writing.

Where KENDRIS is to provide a written report to the client or other documents, records, data and/or information, these results of their work are only legally binding on KENDRIS if validly signed and they shall only be for personal use. The client is only allowed to make them available to third parties including authorities with prior written consent of KENDRIS.

### 3. DUTY OF DILIGENCE

KENDRIS executes the agreement, within the scope of the directives and information provided by the client, professionally and with due care and based on their own experience.

The directives of the client have to be provided in writing and in such due course that they can be executed during the ordinary working hours of KENDRIS.

KENDRIS may act upon instructions which are not provided in the above mentioned form. In such cases KENDRIS is entitled to obtain a subsequent written confirmation from the client.

In urgent cases, KENDRIS may act without specific instructions from the client. In such cases KENDRIS will be guided by the client's assumed best interests and inform the client without delay.

Any complaints by the client are to be made in writing within one month after possible discovery of any defect but in any case no later than one year after delivery of the services, respectively after termination of the agreement.

In case of breach of duty of care or fault in the execution of an agreement, KENDRIS is allowed at all times to redeliver the service in a proper way.

### 4. EXECUTION OF THE MANDATE

KENDRIS, at its free discretion, has the right to use KENDRIS group entities for the execution of the agreement or parts thereof.

KENDRIS has the right to delegate the execution of the agreement or parts thereof to (external) third parties (service providers). In such cases KENDRIS is only liable for due care in selecting and/or instructing the third parties. As a general rule, KENDRIS will consult with the client prior to taking any decision.

### 5. COOPERATION DUTIES

The client is required to ensure that during the whole term of the agreement all documents necessary for the execution of the mandate are submitted to KENDRIS without express request in due time and that KENDRIS is given knowledge of all facts and circumstances which are of importance for the execution of the mandate.

During the whole term of the agreement the client will ensure the availability to KENDRIS of all necessary, competent and authorized representatives.

KENDRIS will bring to the attention of the client any known facts and circumstances which may jeopardize the proper execution of the mandate or which, in their view, may lead to obviously inappropriate results.

### 6. DUTY OF CONFIDENTIALITY AND DATA PROTECTION

Subject to subsequent para. 7, KENDRIS is to maintain professional secrecy regarding all confidential information about the client and his business relationships provided the adequate and proper execution of the agreement does not require disclosure. The client can release KENDRIS from this obligation.

The general data protection policy of KENDRIS, the on-line data protection policy of KENDRIS as well as any specific provisions in agreements with the client apply to the processing of personal data as well as the distribution of personal data to third parties.

### 7. RELEASE OF CONFIDENTIAL INFORMATION FOR FATCA & AEOI PURPOSES

The client authorizes KENDRIS, KENDRIS group entities and any third party engaged by KENDRIS to report to the U.S. Internal Revenue Service (IRS), and other U.S. authorities according to the Foreign Account Tax Compliance Act (FATCA) and the responsible Swiss and international authorities according to applicable Automatic Exchange of Information agreements.

(AEoI) relevant information for FATCA and AEoI purposes about the client, the owners and/or the controlling persons or beneficiaries of any structure administered by KENDRIS. Additional information regarding data categories and the extent of disclosure pursuant to FATCA, resp. AEoI agreements is in the KENDRIS Offer and Engagement Letter. The client hereby explicitly waives any protection and any rights under KENDRIS' duty of confidentiality.

## **8. INTELLECTUAL PROPERTY RIGHTS**

KENDRIS is entitled to make further use of any know-how, ideas, methods and techniques developed during the execution of the agreement. Any copyrights related to the work results handed over to the client remain the property of KENDRIS.

The client may not use professional statements made by KENDRIS for advertising purposes. This also applies to any reference to the contractual relationship with KENDRIS.

## **9. FEES**

Unless there is a deviating agreement with the client in the KENDRIS offer letter, KENDRIS computes its fee for services rendered on a time spent basis. The applicable hourly rates are adjusted at the beginning of every business year. For the setup and administration of structures a fixed fee may be agreed. Out of pocket expenses and any value added tax or withholding tax are charged separately.

Kendris levies in addition to the invoiced fees a service charge consisting of a percentage applied on the overall fees invoiced (excl. responsibility, registered office, domicile rental and eKENDRIS service fees where applicable). This fee covers general office expenditures but excludes secretarial work rendered. KENDRIS shall be entitled to reasonably adjust the percentage applied from time to time.

KENDRIS may require appropriate down payments.

KENDRIS issues invoices periodically. Payment is due within 30 days. Delay of payment will result in an interest charge of 5% plus costs for notification and administration and KENDRIS reserves the right to withhold services work results and documents.

## **10. LIABILITY**

The following liability rules are applicable in the absence of any contrary written agreements between KENDRIS and its clients:

- (a) KENDRIS is liable for contractual or non-contractual damages in connection with a contractual relationship with the client, only in cases of gross negligence.
- (b) KENDRIS excludes any liability for indirect damages (such as loss of profits, consequential damages or claims by third parties).
- (c) KENDRIS excludes any liability for the activities of third parties involved in the execution of the agreement (see para. 4); the liability is limited to cases of gross negligence regarding their election, instruction and supervision.
- (d) Any liability is also excluded where KENDRIS acts upon client instructions.

Claims must be filed in writing by the client with KENDRIS not later than one year after emergence of the claim.

The above mentioned limitations of liability also apply towards all employees of KENDRIS and its KENDRIS group entities and any third party involved by KENDRIS (see para. 4).

## **11. TERMINATION OF THE AGREEMENT**

In the absence of any contrary written agreement, either party may terminate the agreement in writing and at any time without notice period. The fees and expenses incurred in the course of the agreement remain owed.

Untimely termination of the agreement shall lead to liability of the terminating party for any damages caused. Damages also include any claims of KENDRIS group entities or (external) third parties (see para. 4) against KENDRIS in connection with the terminated agreement.

If the termination of the agreement with KENDRIS results in the transfer of structures of the client to a new service provider, the customer shall bear the costs of this transfer.

If the client is an individual, the agreement does not automatically cease in case of death or incapacity to act. If the client goes into bankruptcy or similar procedures, the agreement only expires after notice has been given by the competent authorities.

## **12. RETENTION AND RELEASE OF DOCUMENTS AND FILES**

KENDRIS retains documents handed over by the client in connection with the execution of the agreement and substantial documents established by KENDRIS as well as the respective correspondence in accordance with the applicable Swiss legal obligations to preserve records.

Upon request by the client, KENDRIS shall release all documents received from the client or from third parties for the client. This does not apply to correspondence between the parties and to documents of which the client already possesses an original.

KENDRIS can, at the client's expense, produce and retain copies or photocopies of documents, which are to be returned to the client.

Subject to a respective prior agreement and remuneration, the client may also request for the remittance of electronic files established by KENDRIS in execution of the agreement.

## **13. FINAL PROVISIONS**

Changes and amendments to agreements are only valid if they have been agreed upon by the parties in writing.

The overall validity of an agreement shall not be affected by any individual provision becoming invalid or unenforceable. An invalid or unenforceable provision shall be replaced by a provision covering the original intentions as closely as possible. KENDRIS reserves the right to change these General Terms and Conditions at any time. Any changes shall be communicated to the client in writing or any other appropriate manner and, without objection, become applicable within one month. Correspondence is sent to addresses as provided by the client. Any changes of address shall be communicated to KENDRIS as soon as possible.

By disclosing an e-mail address and/or using any other means of communication and/or collaboration platforms, the client agrees to communicate with KENDRIS by e-mail or such means of communication and/or collaboration platforms and accepts all inherent risks connected thereto such as illegal intrusion or damages caused by viruses or unauthorized third parties. The client agrees to install appropriate protection against illegal intrusion and viruses and to inform KENDRIS of any occurrence of risks such as the illegal intrusion of email-accounts or of any other electronic media or devices. KENDRIS declines any liability for damage in connection with the use of e-mail and/or other means of communication and collaboration platforms. The client undertakes to fully indemnify and hold harmless KENDRIS and its affiliates, directors, officers and employees from any liability for existing and future damage incurred pursuant to use of emails and/or other means of communication and/or collaboration platforms.

All agreements between KENDRIS and its clients are governed by **Swiss law**.

Any dispute arising between KENDRIS and the client shall be resolved amicably and the parties commit themselves to provide the other party adequate opportunity to submit a written statement before invoking a court proceeding. The place of jurisdiction for all disputes arising from the business relationship between KENDRIS and its clients is the competent court at the seat of KENDRIS. For claims against clients, KENDRIS reserves the right to elect the courts of the client's registered office or residence or any other competent court.