

TERMS AND CONDITIONS

General

These terms and conditions (“**T&Cs**”) apply to Merkle Sweden AB, 556807-5641, (“**Agency**”) providing certain services (the “**Services**”) and delivering certain materials and work (“the **Deliverables**”) to the Client, as set out in the relevant statement of work agreed between the parties (“**SOW**”).

When the SOW is signed by both parties, the T&Cs and the SOW together form a binding agreement between the parties for the provision and receipt of the Services and Deliverables (the “**Agreement**”) unless the parties have entered into a separate negotiated agreement (such as a master services agreement) between them in respect of the same Services and Deliverables, in which case that negotiated agreement will apply.

Other than as set out above, this Agreement will prevail over any terms or conditions contained in or referred to in any quotation, purchase order, invitation to tender, request for proposal, request for information, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.

No addition to or modification of the Agreement shall be binding on the parties unless made by a written instrument which the parties unequivocally mutually agree in writing.

Agency's role

1. The Agency is appointed on a non-exclusive basis to provide the Services and produce the Deliverables for the Client.
2. The Agreement will commence on the date of last signature of the SOW and the Agency will use reasonable endeavours to provide the Services and Deliverables in accordance with the project timescales set out therein.
3. The Agency will provide the Services and Deliverables with reasonable skill and care and in accordance with the terms of the SOW and these T&Cs.

Performance of the Services

4. The Client will give the Agency clear briefings and ensure that all the facts given about its products and services are accurate. The Client will provide to the Agency all relevant information and materials concerning the Client and the Client's requirements in respect of the Services as is reasonably necessary to enable the Agency to perform the Services. Prior to the date of Service commencement, the Client will obtain all necessary licences, permissions and consents which may be required to enable use by the Agency of such information and materials.
5. The Client shall follow reasonable instructions from the Agency, and provide assistance as reasonably requested by the Agency, regarding the Service. For example, and in particular, if necessary for the performance of the Service, the Client shall provide the Agency with (i) access to its relevant third party accounts (ii) access to software tools for testing, (iii) access to (and set-up of, if not already acquired) conversion optimization software tool, and (iv) specially set-up (“dummy”) accounts for testing of actual purchases.
6. The SOW will be agreed by the Client and the Agency and will detail all Services to be provided and Deliverables to be produced for the Client. Any changes, deletions or additions to the SOW and/or these T&Cs shall be binding on the parties only if unequivocally agreed by the parties in writing.
7. In respect of each Service or Deliverable, where the Agency seeks approval within a specific time-scale, if no express approval or rejection is received by the Agency within that timescale the Service or Deliverable will be deemed to have approved.
8. The Agency will advise the Client immediately of any changes in the estimated cost of Services or Deliverables or any changes in plans, schedules or work in progress previously approved in writing by the Client.
9. Unless otherwise stated in the Agreement, the Agency's contracts with suppliers in respect of the Services shall be made in accordance with, as far as possible, standard or individual conditions and contracts. The rights and liabilities as between the Client and the Agency shall correspond, as far as possible, to those between the Agency and the various suppliers under such conditions, including in particular any rights of amendment, omission and cancellation.

Fees

10. In consideration of providing the Services and Deliverables, the Client will pay the Agency Fees, Expenses and Third Party Costs as set out in the SOW.
11. The Agency will invoice the Client at the intervals set out in the SOW and unless otherwise agreed in the SOW, the Client will pay the invoice within 30 days of the date of the invoice.

12. The Agency reserves the right to adjust the Fee, and its general prices, once per calendar year with five per cent (5%). The Client shall be notified hereof in writing, at least three (3) months prior to the new prices entering into effect.

13. All sums paid late shall be subject to interest in accordance with the Swedish Interest Act (Sw. *räntelagen* (1975:635)) until payment is made to the Agency. The Client agrees to waive all rights of set-off or retention.

14. Where a surcharge is levied by a supplier against the Agency due to late payment and this results from late payment by the Client, the Client shall immediately reimburse to the Agency the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount. All third-party expenses incurred by the Agency on behalf of the Client and invoiced to the Agency by the third party in any other currency than SEK will be subject to a surcharge of two percent (2%) upon its gross amount (less value added tax, if applicable).

Credit Insurance

15. The Agency will be arranging and maintaining suitable credit insurance cover on the Client. Where, for any reason, this insurance cover is either refused, withdrawn, revised or inadequate to cover the liabilities of the Agency, the Agency shall be entitled to ask for suitable financial guarantees to be granted by Client to the Agency or shall be entitled to invoice the Client for the Fees, and all other sums due to the Agency, in advance. If the Client is unwilling to provide advance payment or arrange for suitable (to the reasonable satisfaction of the Agency) financial guarantees, the Agency shall be entitled to (i) suspend its Services under this Agreement and/or (ii) terminate this Agreement in accordance with Clause 26. In the event that the Agency requires advance payments in accordance with this Clause, the Agency shall be entitled to charge an administrative fee of 0,5 % of the Fees.

Intellectual Property

16. “Intellectual Property Rights” means the following rights, wherever in the world enforceable, including all reversions and renewals and all applications for registration: (i) any patents or patent applications; (ii) any trade marks (whether or not registered); (iii) inventions, discoveries, utility models and improvements whether or not capable of protection by patent or registration; (iv) copyright or design rights (whether registered or unregistered); and (v) database rights; and (vi) any goodwill in any trade or service name, trading style or get-up.

17. “Client Material”: means all artwork, copy, data, models, designs, photographs, code, software, films, sound recordings and all other material protected by intellectual property rights, owned by or licensed to the Client. All Client Material is vested, and shall remain vested, in the Client. The Client grants to the Agency a non-exclusive, royalty free, worldwide licence to use the Client Materials strictly as necessary to perform the Services and provide the Deliverables under this Agreement.

18. “Deliverable” means all Intellectual Property Rights developed by the Agency specifically for the Client as part of the Service, as set out in the SOW. The Agency assigns the Deliverables to the Client with full title guarantee, provided that the Client has complied with all of its obligations under the SOW and these T&Cs (including, for the avoidance of doubt, any obligations relating to payment).

19. “Background IP” means any Intellectual Property Rights developed by the Agency prior to entering into this Agreement, or not specifically developed by the Agency for the Client, or Intellectual Property Rights developed by the Agency as a part of its general service offering, or Intellectual Property Rights licensed by the Agency from a third party. All background IP Material is vested, and shall remain vested, in the Agency or its licensor(s), as well as any modifications, developments or new materials created in connection therewith, even if done by prompt from the Client. If Background IP is necessary for the Client in order for the Client to use the Deliverables as intended by the Service, the Agency shall grant to the Client a non-exclusive, royalty free, worldwide licence to use the Background IP strictly as necessary in order to use the Deliverables as contemplated under this Agreement.

Warranties and Indemnities

20. If there is an error in Deliverables following delivery or delivery of the Deliverables is delayed or does not occur as planned, the Agency will not be liable to the extent that these have been approved by the Client and, where rejected, only where caused by its default or neglect.

21. The Client warrants that all information supplied to the Agency in relation to the Client's products and services before and during the Term will be accurate and such information and any Client Materials do not infringe any copyright, performing rights, trade mark or other intellectual or proprietary right of any third party, are not in any way contrary to any law, code or regulation applicable and shall not be misleading, indecent or defamatory. With regards to any digital touchpoints interfacing with end-users (such as, but not limited to, websites and applications) created or maintained by the Client in relation to the Services, the Client warrants that such includes a privacy policy and data collection policy which complies with applicable privacy and data protection legislation. The Client hereby indemnifies and will keep the Agency indemnified against all loss, claims, damages and costs arising from any claim by a third party caused by the Client's breach of this clause.

22. The Agency warrants that to the best of its knowledge and belief any work produced by the Agency as part of the Services will not infringe the copyright of any third party and will not contain anything obscene, blasphemous, libellous or otherwise unlawful in Sweden other than as contained in any legal or other advice provided to the Agency and communicated to the Client. The Agency hereby indemnifies and will keep the Client indemnified against all loss, claims, damages and costs arising from any claim by a third party caused by the Agency's breach of this clause.

Termination

23. Each party may terminate this Agreement by written notice to the other (i) if the other party breaches any material provision of the Agreement and does not remedy that breach within 28 days of being required to do so in writing (where such breach is capable of remedy); or (ii) if the other party is placed in bankruptcy or liquidation, commences composition negotiations or proceedings with its creditors, or may otherwise be deemed to be insolvent.

Limitation of Liability

24. Other than as prevented by law or in relation to the Client's breach of clause 21, or due to party's intent or gross negligence, the Client's liability for any expenditure made on the Client's behalf by Agency, the parties' liability to each other under the SOW tort or otherwise shall be limited to 125% of the aggregate fees paid or payable under the SOW to the Agency by the Client.

25. In no event shall either party be liable to the other for any loss or actual or anticipated income, savings or profits, loss of contracts, loss of data, loss of reputation or goodwill, or for any special, indirect, or consequential loss or damage of any kind howsoever arising, unless caused by party's intent or gross negligence.

26. The Client releases the Agency from any liability under or in connection with this Agreement and hereby indemnifies the Agency against any losses incurred by the Agency to the extent that any such liability and/or any such losses arise as a result of the incorporation of Client Material into the Deliverables provided that the Agency has incorporated and used such Client Material in the Deliverables in accordance with any instructions given by the Client from time to time, provided in each case that the Agency has obtained the prior approval of the Client to use such Deliverables notwithstanding any such risks that have been notified to the Client.

Non-recruitment

27. During the term of the Agreement and for a period of six (6) months after the Agreement has expired, the Client shall be obliged to pay an amount corresponding to eight (8) then current price base amounts, calculated according to the provisions of the Social Insurance Code (2010:110), to the Agency, for each employee of the Agency that the Client has come into contact with in the course of the Agreement and that leaves their employment with the Agency for employment with the Client.

Confidentiality and Data Protection

28. Both parties will keep any business ideas, market opinions, information and/or material disclosed in connection with this Agreement confidential. Unless otherwise agreed in writing, no intellectual property rights or licences are implied or granted in respect of the same.

29. If the Agency process personal data on behalf of the Client in providing the Service, the Agency shall act as data processor and the Client as data controller, and the processing shall be done in accordance with the [Data Processing Agreement](#) attached hereto.

Third Parties

30. The Agency may subcontract all or part of the Services to affiliates within the Agency's group, third party suppliers, subcontractors and agents provided that the Agency shall at all time remain liable under the Agreement for those parties' performance.

31. Neither party shall assign, transfer, charge or deal in any other manner with the Agreement or any of its rights under it without the prior written consent of the other party, such consent not to be unreasonably conditioned, withheld or delayed.

Governing law and Jurisdiction

32. The Agreement is governed by and construed in accordance with laws of Sweden. Both parties also submit to the jurisdiction of the Swedish courts as regards any claim or matter arising.