

Terms and Conditions Adcombi Tech Fee – March 2020

These terms and conditions (hereinafter: Terms and Conditions) apply to all offers and quotations issued by Adcombi to the other party (hereinafter: the Client), all agreements (including action plans) entered between Adcombi and the Client (hereinafter: the Parties and each individually a Party) as well as all future agreements entered into between the Parties and all other contractual relationships. In these Terms and Conditions, Adcombi means Adcombi Group B.V. and all related parties that have declared to the other Party that these Terms and Conditions apply.

1. Definitions

- 1.1 Agreement: the quotation signed by the Client or the agreement signed by both Parties, to which in both instances these Terms and Conditions apply.
- 1.2 Content: creatives, whether or not supported by audio, text, pictures, video's etc that are made available, published and/or reproduced by means of various distribution manners;
- 1.3 DSP (Demand Side Platform): a software system which allows its users, whether or not through Adcombi's DSP-seat, to manage and order advertisement campaigns via an exchange
- 1.4 DSP-Seat: the software application which provides access to a specific DSP;
- 1.5 Intellectual Property Rights: all intellectual property rights, including copyrights (*auteursrechten*), trademark rights (*merkenrechten*), patent rights (*octrooirechten*) and trade name rights (*handelsnaamrechten*), in respect of any work, including Content, documents, designs, computer software, customized software (*maatwerkprogrammatuur*) and/or other whether or not electronically recorded information.
- 1.6 Services: the services provided by Adcombi as specified in an Agreement;

2. Basic principles

- 2.1 If a provision in a written Agreement between the Parties conflicts with these Terms and Conditions, the provision in the Agreement shall prevail. If the Terms and Conditions conflict with an action plan, the Terms and Conditions shall prevail.
- 2.2 The application of any of the Client's purchasing conditions or any other of its conditions is explicitly rejected. Adcombi's signing or implied or express acceptance of the Client's documents in or on which it is stated that such general terms and conditions apply (for example because this has been pre-printed on stationery) shall never constitute Adcombi's acceptance of such purchasing conditions or any other of its conditions.
- 2.3 Changes to the terms and conditions of the Agreement may only be agreed between the Parties in writing.
- 2.4 Where the Parties refer to communication "in writing", this shall include, but is not limited to, letters and electronic messages (such as whatsapp messages and e-mail).
- 2.5 Adcombi's quotations lapse automatically if they have not been accepted by the Parties within 30 days.

3. Cooperation

- 3.1 The Client shall provide all information and cooperation in good time, which Adcombi reasonably deems necessary for the performance of the Agreement. The Client guarantees that the information supplied is correct and complete and warrants its timely delivery.

4. Intellectual Property Rights and Content

- 4.1 All of Adcombi's Intellectual Property Rights shall remain vested in Adcombi or in the third party from whom Adcombi has obtained the right to make the work available to the Client. The Intellectual Property Rights regarding any work will not be transferred to the Client in any manner at all. If Adcombi grants a right of use to the Client, this shall be a non-exclusive, non-transferable and non-sublicensable right of use.
- 4.2 All of the Client's Intellectual Property Rights shall remain vested in the Client or in the third party from whom the Client has obtained the right to use the work. The Client grants Adcombi a worldwide, royalty free, non-exclusive license to use the Intellectual Property Rights (including the Content, trademarks and logo's) that are made available to Adcombi under the Agreement. Such license provides Adcombi the unlimited use of (parts of) the Content to perform the Services. The Client guarantees that the Content that it provides to Adcombi is correct and consistent, and that such Content will not include any personal data (*persoonsgegevens*).
- 4.3 The Client acknowledges that it is responsible for the Content and warrants that (i) it will not infringe any legal provision or infringe what in accordance with any written or unwritten law, regulation or guideline is generally considered appropriate (including that the Content will not contain any sexist, pornographic, racist and/or discriminatory information or statements that are insulting, defamatory or offensive) (ii) it will not infringe the privacy and/or the private life of others or infringe any rights of third parties (iii) the Client holds all the rights to publish the Content and warrants that all contributions to any possible third party right holders have been made regarding the use of the Content in accordance with the Agreement (iv) it complies with the relevant DSP's guidelines and conditions where it regards the use of Content (including the guidelines that are available at <https://support.adform.com/documentation/build-for-rtb/common-content-rtb-ad-requirements/>) and (v) the (use of) Content is in no other way unlawful against any third parties.
- 4.4 All Intellectual Property Rights to all software and documentation as well as any preparatory material thereof developed or made available pursuant to the Agreement shall be vested exclusively in Adcombi. The Client shall not be entitled to transfer title to (*vervreemden*), encumber (*bezwaren*), license or sublicense the software and/or documentation. The Client shall not duplicate (*verveelvoudigen*), publish (*openbaarmaken*) or copy the software or the goods identified in the present provision. The Client is allowed to copy the user instructions for internal use.
- 4.5 The Client indemnifies Adcombi against all claims by third parties relating to a (claimed) infringement by such third parties of the Intellectual Property Rights that are made available to Adcombi by the Client (including comparable claims relating to knowledge, unfair competition and the like). At Adcombi's first request, the Client will take over the defence of

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any legal proceedings relating to such claims, of which existence Adcombi will notify the Client as soon as possible and for which Adcombi will provide the Client all the required powers of attorney and assistance. Furthermore, the Client indemnifies Adcombi for all damages and costs awarded against Adcombi in such legal proceedings, including any attorney's fees.

5. Rates and invoices

- 5.1 Rates for the Services are excluding VAT, in euro and shall be stated in (an annex of) the Agreement. Rates shall be based on the price level applicable for the current calendar year.
- 5.2 Adcombi is entitled to annually adjust its rates, in accordance with the **CBS Index for business services**.
- 5.3 The applicable rates and costs for engaging consultants, for using Adcombi's software and for marketing campaigns deployed with the aid of Adcombi's software will be invoiced as further specified in the Agreement.
- 5.4 Prior to the start of each marketing campaign deployed with the aid of Adcombi's software, the Client will inform Adcombi on the amount of the budget of such campaign. At Adcombi's discretion, the Client will either continuously provide Adcombi the required access to produce any reports from the relevant DPS or provide Adcombi in arrears with quarterly reports from the relevant DSP to substantiate such amounts. If it appears from the DPS's reports that the Client spent more on its campaign than it had communicated in advance to Adcombi, Adcombi will invoice the difference to the Client, which amount is immediately payable to Adcombi.
- 5.5 Notwithstanding clause 5.2, Adcombi shall be entitled to adjust its rates for making available any additional functionalities or to match any cost-increasing circumstances that are beyond Adcombi's control, such as excessive use of data by the Client.
- 5.6 The Client shall pay all invoices within 14 (fourteen) days after the invoice date. The Client shall not be entitled to any discounts or set-offs (*verrekening*).
- 5.7 If the Client fails to pay any amounts owed within the agreed payment term, the Client shall owe the statutory interest rate on the outstanding amount, as referred to in sections 6:119a and 6:120 of the Dutch Civil Code (*wettelijke rente bij handelstransacties*). The Client shall also owe to Adcombi any reasonable compensation for the extrajudicial costs and for any costs incurred by court proceedings in connection with collecting such claim or exercising its rights.
- 5.8 Upon written notice, Adcombi shall have the right to suspend in whole or in part the further execution of the Agreement if the Client fails to comply with its duties under the Agreement.
- 5.9 Adcombi may only execute any additional work after prior consultation with the Client. Additional work means any work outside the content and scope of the work agreed upon in writing between the Parties. Additional work will be compensated in accordance with the agreed rates – and in the absence thereof in accordance with the customary rates of Adcombi – and will only be invoiced after receiving the Client's order confirmation, with the next due invoice or upon completing the additional work.

6. Confidentiality

- 6.1 Parties shall maintain strict confidentiality with regards to all information that has come to their knowledge regarding (the implementation of) the Agreement and of which they know or reasonably should know the confidentiality of the information, unless disclosure is permitted or obliged by law or a court order.
- 6.2 Parties guarantee that all individuals engaged directly or indirectly comply with the obligations mentioned in this article.
- 6.3 Upon the Client's prior consent, Adcombi shall be allowed to communicate that the Agreement has been entered into in one or more press releases or other communications.

7. Privacy

- 7.1 Insofar as the Agreement entails that Adcombi will process any personal data at the Client's request and for its purposes, Adcombi will be regarded as a controller in the sense of the GDPR. In such capacity, Adcombi will comply with all its applicable legal obligations. To this regard, the Client warrants that it will inform its employees, its third parties that process under its authority and other data subjects, with reference to Adcombi's privacy statement (see <https://www.adcombi.com/privacy/>).
- 1.1 The Party that infringes its privacy obligations indemnifies the other Party for any claims by data subjects relating to such infringement.

8. Consultancy

- 1.2 The Client can hire consulting services for additional activities that are not included in the applicable fee, for which the rates as included in the Agreement applies or, in the absence thereof, Adcombi's customary rates. This includes any software development activities by Adcombi on behalf of the Client, enabling the client to use Adcombi's API Services. Such activities are regarded as a joint effort by the Parties and its success depends on the degree of cooperation and proper information provided by the Client. The Parties acknowledge that the implementation is an interactive and dynamic process wherein adjustments may occur in timing. Parties will actively attempt to achieve the agreed milestones.
- 1.3 Upon prior notification, Adcombi is allowed to replace any employees involved in carrying out the Agreement. If the Client has reasonable objections to the replacement of the employee(s), the Parties will consult each other to find a suitable alternative.
- 1.4 Unless explicitly agreed in the Agreement, the costs for travel and accommodation, additional hours and other special costs relating to the services under the Agreement are not included in the applicable rates and prices and will therefore be invoiced separately. Any accommodation costs can only be invoiced after the Client's prior, **written** approval.

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9. Terms

- 9.1 All terms stated by Adcombi have been established to the best of its knowledge, based on the data known to Adcombi when entering into the Agreement and will be respected to the greatest extent possible.
- 9.2 Any delivery dates and/or time limits stated in any Agreement, annex, action plan or quotation shall always apply as target dates, shall always be indicative and are no fatal terms (*fatale termijnen*) unless explicitly agreed otherwise. In all events, including if the Parties have explicitly agreed a final time limit in writing, Adcombi shall only be in default (*verzuim*) after the Client has sent Adcombi a written, proper and detailed notice of default (*ingebrekestelling*) and the reasonable term, that the Client has granted to Adcombi to remedy the breach, has passed.
- 9.3 Adcombi shall not be bound to any time limits or delivery dates that can no longer be complied due to circumstances beyond Adcombi's control that have occurred after entering the Agreement. If any time limit threatens to be exceeded, Adcombi and the Client shall consult each other as soon as possible.

10. Information

- 1.5 The Client is responsible for and ensures the timely decision-making regarding questions, ambiguities and/or decisions regarding its campaigns and all other aspects that are part of its responsibility, to assure an unhindered continuation of the Services.

11. Liability

- 11.1 Adcombi accepts an obligation to compensate damages insofar as stipulated in this article. Adcombi's total, cumulative liability in respect of the Client for direct damage or loss shall be limited to an amount equal to the amount paid by the Client to Adcombi pursuant to the Agreement in the three months preceding the fact that caused the damage or loss, or €250,000 if this latter amount is lower. In this regard, a series of mutually related events that cause damage or loss shall be considered as one event and one fact causing the damage or loss.
- 11.2 Adcombi shall not be liable for any indirect damage or loss, including, without limitation, loss of profit, loss of data, claims from third parties, fines, penalties or additional tax demands (*naheffingen*), lost income or lost savings, reputational damage or damage to one's image, or any other indirect damage or loss or consequential damage (*gevolgschade*) or loss resulting from or in connection with any failure by Adcombi to comply with an obligation or in connection with any unlawful act.
- 11.3 In the provision of its Services and notwithstanding Adcombi's obligation to limit any damages as much as reasonably possible, Adcombi is not responsible for and cannot be held liable for any direct, indirect or consequential damage insofar as the Client uses its own DSP-Seat or that of another party and the Client suffers any damage or loss as a consequence of any shortcoming of such DSP.
- 11.4 The Client shall only be entitled to any compensation of damages if the Client reports the damage to Adcombi in writing as soon as possible, but no later than one (1) year after the damage has been caused.
- 11.5 The previous paragraphs of this article shall not apply if and in so far as such damage or loss was caused by Adcombi's deliberate intent (*opzet*) or willful recklessness (*bewuste roekeloosheid*).

12. Force Majeure

- 12.1 In the event of force majeure (*overmacht*) affecting one of the Parties, the obligations pursuant to the Agreement shall be suspended for as long as the situation of force majeure lasts. Any non-conformance by suppliers of Adcombi or third parties engaged by the Client (including parties that make their DSP-seat available to the Client) shall also be considered as force majeure. However, the suspension shall not apply to the obligations that the force majeure does not concern and/or the obligations that already occurred before the situation of force majeure came into being.
- 12.2 If the situation of force majeure (*overmacht*) has lasted for more than sixty (60) days, the Parties will be entitled to terminate the Agreement by means of a registered letter, unless it is foreseeable that the situation of force majeure will be resolved within a reasonable period of time. Anything that already has been performed as a result of the Agreement shall then be settled pro rata, without the Parties owing each other anything else.

13. Subcontracting and transfer

- 13.1 Adcombi is allowed to deploy third parties to carry out its obligations under the Agreement. The Parties shall not be allowed to transfer the rights from the Agreement to a third party without the other Party's prior permission in writing.

14. Voidability

- 14.1 If any of the provisions of the Agreement (including these Terms and Conditions) is null and void (*nietig*) or is declared null and void (*vernietigd*), it shall be without prejudice to the legal effect of the other provisions.

15. Dissolution and termination

- 15.1 A Party shall have the right to terminate all or parts of the Agreement with immediate effect, without notice of default (*ingebrekestelling*), without judicial intervention being required and without this creating any obligation to compensate possible damage or loss of Parties if any of the following circumstances occurs:
- the other Party is declared bankrupt (*failliet verklaard*);
 - temporary or permanent suspension of payment (*surseance van betaling*) is granted to the other Party;
 - the enterprise of the other Party is liquidated or discontinued.
- 15.2 In the case of a dissolution, the dissolution will only affect the obligations arising after the dissolution date and therefore the dissolution will not have retroactive effect.

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- 15.3 The application of section 7:408 of the Dutch Civil Code is explicitly excluded.
- 15.4 Any rights and duties from the Agreement which by their nature and content are intended to remain in effect, such as Intellectual Property Rights, liability, force majeure and dispute resolution, shall remain in full effect after termination or dissolution (*ontbinding*) of the Agreement.
- 16. Representation**
- 16.1 Only the duly authorised representatives of the Parties shall be authorised to make any arrangements (in writing) that differ from the provisions of the Agreement.
- 17. Applicable law / competent court**
- 17.1 The Agreement and these Terms and Conditions shall be governed by Dutch law. Any and all disputes arising as a result of or in connection with the Agreement and the Terms and Conditions shall be submitted to the competent court in Amsterdam, the Netherlands.
- 18. Term and termination**
- 18.1 The Agreement commences on the date on which it is signed by both Parties and ends after the agreed period. The Agreement will thereafter be automatically renewed, each time for a period equal to the initial period.
- 18.2 The Parties shall have the right to give notice of termination (*opzeggen*) of the Agreement by the end of its term, taking into account a three months' notice period.