



Professional principles of conduct for Swiss Communications Agencies

LEADING SWISS AGENCIES



I. General

1. Scope of application

The Professional principles of conduct set out below apply to all relations between the client (the «Client») and the agency (the «Agency»), if they have been made part of the contract.

A great many of these definitions correspond to normal business practice.

Diverging provisions require an agreement in writing. These provisions apply to all present and future services performed by the Agency.

II. Professional code of conduct

2. Advertising law

In its work for the Client the Agency shall observe the statutory provisions and the national and international standards of integrity in advertising (including, in particular, the rules of the International Chamber of Commerce CCI).

3. Good faith

The Agency shall act as the Client's agent and look after the Client's interests to the best of its ability. It undertakes to safeguard the Client's business secrets completely.

4. Agency, performance by third parties

The Agency shall have the right to call in third parties to perform a contract.
The Agency shall be responsible for the careful selection and instruction of such third parties. In relations with third parties the Agency shall act on behalf of and for the account of the Client.

5. Restraint on competition

Before entering into a new service contract, the Agency shall inform the Client of any existing contracts for competing products or services and shall throughout the term of the contract inform the Client of any relevant new contracts entered into. Any restraint on the acceptance of competing accounts shall only apply if agreed to in writing.

6. Intellectual property

The Client expressly recognizes the intellectual property of the Agency, in particular the copyright on all work produced by the Agency during the co-operation

(exposés of concepts, layouts, copy, images and sound, artwork, photography, films, labels, packaging, trade mark designs, logotypes, online media productions, radio and television commercials, etc.). Reservation is made in respect of paragraph 21 below.

7. Rights of use

During the contractual cooperation and in the context of the previously defined geographical area the Client is entitled to use the Agency's intellectual property in conformity with the agreement as long as he fulfils his contractual obligations to the Agency.
After termination of the contractual co-operation, use of intellectual property shall only be permitted with the Agency's approval and against adequate remuneration. Reservation is made in respect of paragraph 21 below.

Usually this remuneration corresponds to 10% of the costs of the advertising and shall be paid annually for a period of three years. After this period the right of use shall be paid off for the advertising in question.

The rights of use allowed to third parties (models, presenters, photographers, musicians, picture agencies etc.) are to be settled with the agency during the period of the contract, and after the termination of the contract are to be determined separately.

8. Illegal use

In case of any illegal use of the Agency's intellectual property or presentations (cf. paragraph 12) by the Client, the Client shall pay a penalty of a minimum of CHF 50 000.– per breach. The right to claim additional damages is reserved. Payment of the penalty does not remove the inhibition from illegal use. In addition, the Agency is entitled to apply for an injunction to refrain from illegal use.

9. Advertising data and materials

1The Agency guarantees the safekeeping and availability of all materials required for the production of communications materials, i.e.

- a) all primary data, i.e. the entirety of data saved in the process of developing and creating the final data versions;
- b) final data versions, i.e. the electronic, photomechanical or otherwise perceptible data, as approved by the Client, that are instrumental to and serve the purpose of completion of the communications materials;
- c) other documents or basic materials (such as printing materials, image and sound carriers).

2Insofar as the Client has fulfilled his contractual obligations to the Agency, he is entitled to request the release of his data and, upon payment of a fee covering the costs of sourcing and releasing data, he may subsequently process and maintain said data independently.

3The Agency is entitled to destroy data and documents that are no longer used. Prior to this, the Agency is to inquire if the Client wishes to obtain this ma-

terial in accordance with Par.2 above, or if he requires the further management/processing by the Agency against invoicing of actual incurred costs.

4Release of data and documents to the Client does not entitle the latter to exercise the right of use. Reservation is made in respect of paragraph 21 below.

III. Agency evaluation

10. First meeting

The first meeting is free of charge to the Client and without obligation for either party.

11. Placing of order

All work subsequent to the first meeting shall be reimbursed. The Agency shall inform the Client about this in advance.

12. Recommendations, presentations

The Agency does not provide any preparatory services free of charge. When accepting a presentation assignment, the Agency shall inform the Client in writing of the fee to be charged for the presentation.

Out-of-pocket expenses and travelling expenses are not included in the fee and shall be charged separately in accordance with previously agreed terms. The Client's use of the presented ideas and proposals shall only be permitted if approved by the Agency in writing. The provisions on copyright, right of use and illegal use are applicable by analogy. If the Agency's proposals are implemented, the presentation fee shall be taken into account adequately.

Fees for presentations

The fee recommendations listed here are guidelines and correspond to accepted industry norms.

- a) recommendations without creative proposals:
from CHF 10 000.-;
- b) minor presentations including creative proposals:
from CHF 10 000.- to CHF 20 000.-;
- c) medium-size presentations including creative proposals:
from CHF 20 000.- to CHF 30 000.-;
- d) major presentations including creative proposals:
from CHF 30 000.-.

IV. Performance profile of the agency

13. Core activities

The Agency performs services for the Client in a continuous relationship (long-term mandate) or in particular cases for specific work (specific order).

Its core activities are

- a) Analysis of the situation
 - Analysis of data and facts as supplied by the Client (briefing documentation)
 - Commentary on existing marketing objectives and strategies with reference to market structure, competition, buying, consumption or usage
 - Assistance in organization and interpretation of market- and media-research;
- b) Communication strategy

Formulation of a communication strategy based on the analysis of the situation, essentially including the following elements:

 - Communication objectives:

Formulation of the quantitative and qualitative objectives that are to be achieved by advertising
 - Target groups:

Definition of target groups and their characteristics
 - Positioning:

Description of the perception (images, message, attributes) that is to be anchored within the target group;

- c) Concept

Formulation of the platform idea as a basis for the verbal and/or visual creative work;
- d) Media strategy

Selection of suitable media (media strategy) and definition of their functions in terms of time, region and cost (media planning);
- e) Implementation
 - Inviting quotations for the production of the planned advertising material
 - Purchase negotiations
 - Placing of orders with media owners, producers and suppliers
 - Supervision of deadlines
 - Quality control;
- f) Administration
 - Control of all invoices for services performed by third parties
 - Control of costs and budgets
 - Accounting for all media.

14. Additional services

The agency will furthermore supply the following additional and special services, in keeping with the basic principles set out in paragraph 19:

- a) Research commissioned by the Client, such as market, public opinion and motivational research, product and media tests, analysis of competition, and special marketing and media activities;

- b) Creative work such as drafts, finished layouts, sketches for presentation, finished artwork, photographic and photo-technical work, production of films, TV and radio advertising, slide and multi-media shows, videos and the supervision of these productions by the Agency;
- c) Creation of texts, translations and adaptations;
- d) Expenses related to technical production, e.g. setting, retouching, image conversions, litho productions, duplicates, pre-prints, screen models, print films, paper copies, data media, data interchange, data archiving;
- e) Planning and implementation costs of advertising effectiveness surveys;
- f) Extraordinary travel costs and expenses, and special administrative and organizational work on request by the Client;
- g) Work performed by specialists, e.g. legal counselors, art buyers, stylists, etc.

15. Special services

Special activities such as press and public relations work, direct marketing, sales promotion, event marketing, an Internet presence, sponsoring, design project, exhibition stands and projects, work related to special campaigns, such as consumer promotion and/or promotion with purchasers and dealers and the organization and evaluation of competitions are subject to separate agreements. (c.f. paragraph 19).

V. Agency compensation

16. General

Members of LEADING SWISS AGENCIES are fundamentally open to any form of payment that results in a fair profit.

Whether a percentage-base payment, one-off payments for a concept or for specific activities, combined with set company fees or employee hourly rates – as a rule the Agency will propose a modular system which is customised to the Client's requirements and the nature of the mandate.

Experience to date has however proved conclusively that any formula can result in similar overall profits to the Agency, so long as it is intended to be a fair form of compensation.

The following may be taken as exemplary values for the basic services* of a classic advertising agency:

For a mandate of the (gross) size of

- 0.5 – 1.5 million: 20 – 25%
- 2.0 – 5.0 million: 17 – 22%
- from 6.0 million: 12 – 17%

compensation paid to the agency (= the proportion of the overall budget which finances the agency's basic services).

17. Percentage-base payment

LEADING SWISS AGENCIES supports all arguments which speak in favour of the form of billing which still remains the most significant, the percentage-base payment. The percentage-base payment compensates the agency for all services in the area of its core activities (article 13) inclusive of the use of the intellectual property of the agency for the duration of the contract.

In the case of a percentage-base payment, the fee for an average advertising budget in Switzerland for an account requiring standard industry handling efforts shall be 17.65% on invoiced amounts, corresponding to 15% of the total advertising budget.

The advertising budget shall include all expenses incurred by the Client for the planning, production and implementation of the advertising campaign including the Agency's fee.

Justifiable grounds for a departure from the 15% / 17.65% formula are:

- a clearly demonstrable restriction of services in connection with core activities (e.g. excluding media services, etc.);
- x-fold million advertising budget in connection with a basic strategy and basic concept;
- unaltered use of advertising materials over a period of years (no change in the concept or in the implementation).

18. One-off fee payments, one-off concept fee payments, flat fees

For all Agency activities that come under article 13, payment may also be agreed upon in the form of a one-off payment.

A clear description of the scope of the services required (articles 13/14/15) must however accompany the amount offered.

The use of the intellectual property of the Agency must likewise be determined, as a part of the calculation of the fee or as a separate compensation payment.

A combination of flat-fee payment and percentage-base payment is also a possibility.

19. Set company fees, graphics fees, hourly rates

In keeping with the prior quotation, all activities of the Agency that come under article 14, Additional Services, or article 15, Special Services, shall be invoiced for separately, either in accordance with the expenditure of resources involved or on the basis of a flat fee. The Client will be informed by the Agency of the relevant rates (hourly or daily rates). As a rule all activities that come under article 14, Additional Services, and 15, Special Services, shall be determined on the basis of the set company fees, graphics fees and daily or hourly rates of the Agency and will be invoiced for as a supplement to the percentage-base or flat fee.

The Client will be informed of the relevant rates by his agency.

20. Additional special provisions

LEADING SWISS AGENCIES has a positive and open attitude to the question of payment by results. Nonetheless, all experience to date has demonstrated that payment by results cannot be a basic remuneration formula for the Agency.

Payment by results operates in the framework of a supplementary incentive. The quality of a relationship, the achievement of marketing and advertising targets and the Client's positive business figures are the most usual parameters of payment by results.

In the context of integrated communication mandates and clearly defined leading or supervisory services in conjunction with other partner companies,

the Agency shall be entitled to invoice for such strategic and coordination activities additionally.

21. Long-term advertising material

The fee for the creation of labels, packages, logos, types, trade marks and similar work, and the granting of the right of use to such work shall be determined and reimbursed on the basis of the Agency's time and expenditure involved, and the exploitation value of the work concerned.

Upon payment of the relevant fee the right to use this advertising material shall be assigned to the Client. The Agency will advise the Client if the unrestricted right of use should not be included in the compensation agreed upon for the development of advertising materials intended for long-term use.

22. Cancellation or reduction of budget

In the event that an order is cancelled or substantially reduced before performance according to agreement, the Client shall indemnify the Agency as follows:

- a) If the campaign is still at the stage of initial concept: 1/3 of the fee originally agreed on.
- b) If the campaign is at the stage of production: 2/3 of the fee originally agreed on.

The indemnity shall be calculated based on the budget originally planned.

Additional services not included in the fee shall be paid in full.

If no percentage-base payment has been agreed upon, or the planned budget has not been specified at the time of the cancellation, the Agency shall be entitled at all events to charge for the cancelled or substantially reduced project in accordance with the expenditure involved, so as to cover its costs.

23. Agency commission

Any commission which the Agency receives on behalf of the Client from third parties shall be passed on to the Client.

VI. Term of co-operation

24. Termination of the contract

In view of the working capacity to be made available by the Agency, Agency contracts may only be terminated with six months notice effective December 31 of each calendar year.

Termination notices which do not observe this notice period are deemed to be untimely and the Client shall be liable for any damages.

Specific orders are finalized by performance.

