



Sharper Terms and Conditions

The Sharper Terms and Conditions (hereafter “Terms and Conditions”) govern the services provided by Sharper (hereafter “Sharper” or “We”) to the Client (hereafter “Client” or “Clients”), in particular mobile apps user acquisition.

The Terms and Conditions are between Sharper and the Client and describe the applicable rules and contractual obligations applicable to Sharper and the Client. The Terms and Conditions automatically apply to each Campaign concluded with the Client as well as for any Campaigns renewals.

Sharper and the Client are collectively designated as the “Parties”, and individually as the “Party”.

The Parties undertake to respect the rules and obligations detailed hereafter.

1. About Sharper

“Sharper” is the commercial name of the company ACH.31, which is the legal name of the entity and will only be use for invoicing.

Thanks to its proprietary predictive models relying on machine learning, Sharper enables its Clients to acquire rapidly and accurately Users given the Clients' objectives.

Sharper indeed offers to its Clients its experience in the AdTech industry to support their growth and provide them with Users in a fully transparent way via multiple qualitative traffic sources.

2. Definitions

“Advertisements” or “Ads”	means the Client’s promotional messages published by Sharper on behalf of the Client on mobile applications
“Campaign”	means any campaign conducted by Sharper on behalf of the Client to promote the Client's Advertisements
“Client”	means the company executing the Contract with Sharper, to which Sharper is offering its Services and which is accepting these Terms and Conditions
“Client Content”	means the Client's image, graphics, text, data, links or other creative elements supplied by the Client to Sharper and to be included in the Ads
“Confidential Information”	means all material, non-public, business-related information, written or oral, whether or not marked as such, that is disclosed or made available to the receiving Party directly or indirectly, through any means of communication or observation
“Contract”	means these Terms and Conditions, the Data Processing Agreement in Exhibit 1 of these Terms and Conditions, the Insertion Order, and any other documents specific to the Services selected by the Client

“Data Processing Agreement”	means the agreement available in Exhibit 1 of these Terms and Conditions which defines the applicable rules and obligations to the Parties in terms of personal data protection
“Impressions”	means the display of graphic elements (banner, videos, etc.) of the Client
“Intellectual Property Rights”	means in particular, but not limited to, texts, drawings, images, illustrations or other components of the Advertisements, trademarks, logos, names, acronyms, colors, graphics and other distinctive signs, software applications, programs and documentation which belong to the Client and which is communicated by the Client to Sharper to be used by Sharper on behalf of the Client to promote the Client's Advertisements
“Insertion Order”	means the document that may contain information about the Sharper Services chosen by the Client, the starting and ending date of the Campaign, the cost of the Campaign, the target audience to be covered, the information about the Ads to be placed (size, length, format, time slot, etc.), the number of Impressions to be served, the pricing structure, etc.
“Partner”	means the companies working with Sharper to provide the Services to the Client
“Services”	means the services carried out by Sharper on behalf on the Client regarding the Campaign and the Advertisements
“Users” or “End-Users”	means the individuals designated by the Client and targeted by the Campaign or the Advertisements pushed by Sharper

3. Subject of the Terms and Conditions

The aim of these Terms and Conditions is to define the rules and obligations applicable to the relationship between Sharper and the Clients using Sharper Services. The Client undertakes to respect, without any reserve, the Contract including the present Terms and Conditions. The Client acceptance of an Insertion Order implies full acceptance by the Client of the Terms and Conditions.

The Contract represents the entire agreement between the Parties and shall prevail over any other prior agreement, commitment, representation or contract entered into between the Parties and having the same purpose, whether written or oral.

In addition, the Parties agree to comply with all regional, national and international applicable laws, orders, statutes, codes, regulations, ordinances, decrees, rules, subordinate legislation, treaties, directives, bylaws, standards or other requirements with similar effect of any governmental or regulatory authority, each as updated from time to time which apply to them in the circumstances governed by the Contract.

4. Sharper services

Sharper offers to its Clients the Services based on its proprietary predictive models relying on machine learning.

Such services include:

- *Campaign display*: Sharper offers to its Clients the display of their Advertisements Campaigns on the publishers placements
- *Campaign optimizations*: Sharper offers to its Clients several ways of optimizing their Campaign such as conversion rate and post-install metrics to acquire Users;
- *Targeting Users*: Sharper offers to its clients the possibility to target Users based on their country, city, device type, or OS version;
- *Fraud fighting*: Sharper develops proprietary processes for anti-fraud checks on a database of verified fraud free mobile devices, to guarantee it serves Ads only to real and quality Users. It also identifies repeated fraud and enables Clients to set their own standards of quality.

The Services selected by the Client are listed in the Insertion Order, as well as the details and conditions regarding the specific Services ordered by the Client.

To provide such services, Sharper is relying on diverse and high-quality global supply Partners which Sharper already knows and has already worked with. Sharper works only with known and trusted partners and does not onboard new partners that it does not know.

The Client agrees that its Advertisements may be displayed next to advertisements of its direct or indirect competitors. The Client also agrees that Sharper may change the technology used to provide the Services to the Client without notice or compensation to the Client.

5. Obligations of the Parties

The Client complies with the technical requirements and specifications of Sharper, in particular providing Sharper with files of the Advertisements to be displayed, supplying Sharper with the Client's logos and other Client Content to be displayed in the Advertisements.

When setting up a Campaign, the Client shall determine the targeted audience and the Client Content to be used in the Insertion Order. Any modifications further made by the Client are solely the Client's responsibility and the Client shall be liable for any costs incurred as a result of modifications.

Sharper has the right, at its own discretion, to refuse to run any Campaign if it determines that the Ads or the Campaign does not comply with its quality standards, good practices of the market or applicable regulations, or would otherwise be inappropriate or damaging to Sharper or its Partners. In particular, the Client shall refrain from submitting, and Sharper shall refuse to display, among others, Ads that (i) promote or depict illegal or violent content or activities, (ii) infringe third party Intellectual Property Rights, (iii) are deceptive or misleading, (iv) contain inappropriate messages based on racial or ethnic origin, sexual orientation/gender identity, age, disability, religious or philosophical beliefs, etc.

Sharper uses commercially reasonable efforts not to display the Ads on media that are of pornographic, defamatory, obscene or illegal nature. In the event the Client notifies Sharper in writing that the Ads are being displayed on such media, Sharper will promptly request the Ads to be removed.

The Client shall refrain from submitting deceptive, malicious or fraudulent Campaigns, that is to say Campaigns using automated, deceptive, fraudulent or other invalid means, or which encourage or require End-Users to click on Ads through offering incentive or any other methods that are manipulative, or attempt to create a substitute or similar service. It shall also refrain from submitting a Campaign initiating actions such as a download, a subscription or a call without the End-User's informed consent and engagement. Client acknowledges that such Campaigns may result in direct damage to Sharper, including costs, penalties or lost profit, as

well as Sharper's exclusion from real time bidding market, and that Client shall fully indemnify and hold Sharper harmless of such damage.

6. Exclusion of withdrawal right

The Parties acting in a B2B relationship, it is expressly recalled that the Client does not have the right of withdrawal provided by the French Consumer Code in the context of remote contracts, as the Client is acting within the framework of its professional activity and is not considered as a consumer within the meaning of the French Consumer Code.

7. Invoicing

7.1 Payment conditions

The Insertion Order specifies the price of the Services, the CPI and the volume ordered by the Client and the Client undertakes to pay the amount indicated in the Insertion Order under the payment conditions described hereafter.

Invoices issued by Sharper are payable in full within 30 days of issuance. Except as otherwise agreed between the Parties, Sharper will invoice the Client on a monthly basis. In case of multiple Campaigns, Sharper will provide the Client with invoices for each Campaign.

Applications installs count will be based on third party tracking providers dashboard (Adjust, Appsflyer, Kochava, Branch, Tenjin, Firebase etc.).

7.2 Payment default

Any failure to pay any invoice by the due date shall grant Sharper the right to suspend the performance of the Services described under these Terms and Conditions and shall automatically give rise to the application of late payment interest equal of ten (10) times the legal interest rate, from the first day of delay, as well as a recovery indemnity of forty (40) euros for each due date paid late.

Sharper may suspend all or part of the Services, after sending a formal notice to pay to the Client that has remained unsuccessful within thirty (30) days.

8. Intellectual property

The Parties shall respectively keep full ownership of all Intellectual Property Rights they own prior to the execution of the Contract.

In particular, the Client will ensure full responsibility for obtaining all necessary rights and authorizations for the promotion of any Advertisements. The Client represents and warrants that the content of its Advertisements will not violate any applicable law or regulation, infringe any applicable Intellectual Property Rights, or include no deceptive or harmful content of any kind regarding third parties.

During the Contract, the Client grants to Sharper a worldwide, free of charge, non-transferable and non-exclusive license, to display, reproduce and represent the Client Content, such as the content of the Advertisements for instance, and to use, reproduce and represent the Client's trademarks and logos in order to provide the Services and the publication of the Client's Advertisement on all digital advertising medium as per the Services chosen by the Clients as described in the Insertion Order.

Further to the Client prior written consent by email, Sharper is authorized to indicate the name of the Client in its website for marketing purposes.

In case the Intellectual Property Rights of Sharper is used by the Client, the Client shall respect and use it in accordance with Sharper instructions and prior written consent. The Client shall not modify or attempt to modify the code or otherwise reverse engineer or create derivative works of any aspect of the Sharper's technology.

9. Confidentiality

Each Party shall not use or disclose Confidential Information that belongs to the other Party without its prior written consent, except to perform its obligations under the Contract or in the event of a legal, regulatory or judicial requirement. Any Party subject to such a legal, regulatory or judicial requirement to disclose Confidential Information shall provide the other Party with as much prior notice as is materially possible before disclosure.

Sharper will not share any data pertaining to the Client's Campaign (including all information regarding the specific viewing of the Advertisements, the click-through of such Advertisements or Impressions generated under the Insertion Order or costs and the demographics of Users that respond to the Advertisements) with any third party and shall not permit any third party unless those which Sharper has contracted with to deliver the Campaign and other Partners to use such data to target any offer or communication to End-Users or otherwise to solicit End-Users.

10. Anti-Bribery

The Client warrants to comply with all national, European and international laws and regulations applicable to its activities in the fight against corruption. The Client hereby undertakes that, at the date of signature of these Terms and Conditions, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind in any way and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so. If evidence are brought that the Client has committed any corruption act as described below, Sharper will notify the Client accordingly and require to take the necessary remedial action in a reasonable time and to inform it about such action.

If no remedial action is taken, Sharper may suspend, in part or all, the provisions of Services to the Clients, it being understood that all amounts contractually due at the time of suspension or termination of the Services will remain payable, as far as permitted by applicable law.

11. Data Protection

Data protection is an important matter for Sharper and We ensure to proceed personal data with utmost care. For more information on how We proceed personal data, please read our privacy policy and our cookies policy on our website [here](#).

The Parties agree to comply with all applicable laws that limit, restrict or otherwise govern the collection, use, access, security, storage, protection, and disclosure of personal data including the General Data Protection Regulation (EU) 2016/679 of 27 April 2016 (the "GDPR"), the implementing acts of the GDPR by the Member States of the European Union and/or any other applicable laws relating to the protection of personal data. Any data received by Sharper from the Client will be used for performing the Services. The Client undertakes, when applicable, to inform Users that their data may be collected and or shared with Sharper for marketing purposes.

The Parties execute the Data Processing Agreement attached in Exhibit 1 before launching any Campaigns for GDPR compliance.

12. Force majeure

Neither of the Parties may be held liable for any failure whatsoever to meet its obligations under the Contract if such failure results from a case of force majeure such as, in particular and without limitation: a government decision, including any withdrawal or suspension of authorizations of any kind, a total or partial strike, internal or external to Sharper, a fire, a flood, a natural disaster, a state of war or insurrection or terrorism, a civil unrest, a total or partial interruption or blockage of the telecommunications or electrical networks or power failure, an act of computer piracy, an embargo, or more generally any other event of force majeure with the characteristics defined by case law.

The Party observing the event shall immediately inform the other Party of its inability to perform its service by email and formal notice.

The suspension of the obligations or the delay may in no case be a cause for liability for non-performance of the obligation in question, nor induce the payment of damages or penalties for delay.

13. Warranties and indemnities

Except as expressly otherwise set out in these Terms and Conditions, and to the fullest extent permitted by applicable law, Sharper makes no representations, promises or warranties, express or implied, of non-infringement or quality or fitness for any particular purpose of the Services provided under the Contract, and does not represent, promise or warrant that the Services will be uninterrupted, timely secure or error-free.

The Client warrants and represents that it has the right and power and authority to enter into the Contract with Sharper and perform its obligations as set out in these Terms and Conditions and has the right to provide Sharper with the Client Content without infringing any rights of any third party, including, without limitation, Intellectual Property Rights.

The Client shall defend, indemnify and hold harmless Sharper from and against any third-party suit, proceeding, assertions, damages (direct or indirect), cost, liability and expenses (including court costs and legal fees).

14. Liability

In case the Client fails to comply with one of the obligations of these Terms and Conditions, Sharper has the right to terminate the provision of the Services to the Client at any time. Moreover, the Client remains liable to pay the entire amount invoiced for the Services provided by Sharper. The entire liability of Sharper, for all events generating any liability with respect to the Insertion Order, shall not exceed the last 3 (three) months amount invoiced to the Client.

It is expressly agreed between the Parties that, to the fullest extent permitted by applicable law, neither Party shall be liable under any circumstances for any indirect, incidental, special, punitive, or consequential damages in connection with the Contract. In any event, Sharper will not be liable for lost profits, commercial damages, loss of orders, loss of clients, lost opportunity, business disruption of any kind, damage to the Client's brand image and any legal action taken against the Client by a third party. Client acknowledges and accepts that the price paid by the Client takes into account the risks involved and represents a fair allocation of risk.

15. Termination

The Contract shall expire on the date indicated in the Insertion Order or when the total budget chosen by the Client set out in the Insertion Order is exhausted.

Without prejudice to any other rights and remedies, each Party may terminate the Contract with immediate effect by written notice to the other Party if (i) the other Party commits a material breach of any of its obligations under the Contract, or in case of a remediable breach, fails to promptly remedy it or (ii) on the occurrence of a force majeure event as described above.

16. Governing law and jurisdiction

This Contract is subject to French law.

In the event of a dispute between the parties over the interpretation and/or execution of the Contract, express competence shall be attributed to the Courts of Paris, notwithstanding multiple claimants or third-party appeals, including for emergency proceedings or for summary, interim or requested proceedings.

17. Divisibility and Waiver

The circumstance that any provision of these Terms and Conditions is declared null, invalid or inapplicable shall not affect the validity and applicability of the other provisions and shall not exempt the Client from complying with them.

The fact of not claiming the execution of a provision of the present Terms and Conditions or of claiming it with delay shall not be interpreted as a renunciation by Sharper to invoke the said provision with respect to the Client or third party.

18. Modification of the Terms and Conditions

Sharper reserves the right to modify the Terms and Conditions at any time, without notice to the Client. The last version of the Terms and Conditions is the one available [here](#).

19. Miscellaneous

The Contract may be amended only by a written agreement executed by an authorized representative of each Party.

The Parties acknowledge and accept that electronic format is an acceptable means of communication for the execution or sending of an Insertion Order or to modify an Insertion Order. All notices and communications will be addressed to the contact information detailed in the Insertion Order.

In case of contradictions between the Insertion Order and the Terms and Conditions, the Insertion Order shall take precedence in relation to the Services.

The Contract, including the rights under it, shall not be assigned or transferred by the Client without Sharper prior written consent.