

**1. General information and applicability**

- a. The legal relationship between index Internet und Mediaforschung GmbH [referred to below as "index"] and the client, customer or purchaser (referred to below as "Client") is governed exclusively by the following General Terms of Business (referred to below as "Terms"). We do not recognise any conflicting or differing terms applied by the Client unless index has expressly agreed to such terms in writing.
- b. These Terms apply to businesses as defined in the German Civil Code (BGB), section 14, paragraph 1, to legal entities under public law and to special trusts under public law (BGB, section 310).
- c. index's Terms will also apply to all future transactions with the Client in the course of an ongoing business relationship.
- d. All agreements between index and the Client must be made in writing. Communications sent by fax and e-mail are deemed to be in writing.

**2. Commencement of contract**

- a. Contracts with index become effective only when an offer is accepted in writing or the Client takes delivery of the service. Any amendments or additions to the contract must be approved in writing by the Client and confirmed in writing by index.
- b. index may also accept a project from the Client by starting work on it. In this case also, the contract is subject to index's Terms.

**3. Data use and surrender**

- a. index is not required to hand over computer files and layout templates to the Client. If the Client wishes to receive computer files, this must be agreed and remunerated separately.
- b. If index has made computer files or similar data available, these may be changed only with index's consent.
- c. Data provided in the course of presentations remains the property of index and may not be changed or used without permission.
- d. Clients may use data and information provided via the secure private area of index's website solely for their own purposes. The Client may not disclose or make available such information to anyone other than the employees and managers of the Client's business. In particular, the Client is not entitled to relay such information to third parties. This applies to the data as a whole, to excerpts from the data, and to login details (user name and password) for index's online services.
- e. In the event of an unauthorised disclosure to a third party, index is entitled to require the Client to pay a lump sum in compensation equivalent to the amount that the third party would otherwise have to pay for one month's access to the secure private area of the website. This also applies to data that has become known to or been made available to the Client by other means.
- f. Data entered by the Client in index's databases or supplied to index for entry into the databases remains the Client's property and will not be used or disclosed by index without the Client's permission.
- g. index undertakes to keep secure and make regular backup copies of any data entered by the Client, and to retain all data and documents relating to the project for three months after they were last distributed or made available.
- h. The provisions of this section 3 will continue to apply after the contract ends.
- i. index accepts no liability for the Client's subsequent use of data supplied by index. The Client is solely responsible for making legitimate use of such data.

**4. Copyright and rights of use**

- a. In so far as the services provided by index are protected by copyright, the material and territorial extent of the rights of use conferred (reproduction, distribution, broadcast and similar rights) will be set out in detail in the contract if it is not already apparent from the type and nature of the media involved. The agreed remuneration covers these uses, but a separate fee is payable for any uses beyond these.
- b. The contract entered into by the parties is not to be seen as any kind of assignment of copyright.
- c. In the absence of any alternative agreement, index will retain the rights of use to any work that has yet to be paid for when the contract ends or, if payment is being made on a commission basis, has yet to be published.

**5. Remuneration, expenses, payments and arrears**

- a. The Client is to pay index the fee stated in the offer plus any verifiable additional costs involved in delivering the service ("Remuneration").
- b. Remuneration excludes statutory sales tax (VAT), which will be added to the invoice as a separate item at the time of billing.
- c. Unless expressly agreed otherwise in writing, Remuneration is payable immediately upon receipt of invoice. If no payment is received within 30 days of receipt of invoice, the Client will be deemed to be in arrears. Receipt of payment means that the invoice amount has been credited to index's account and is available to index.
- d. If the Client is in arrears, index has the right
  - (i) to charge interest at a rate five percentage points above the base rate of the European Central Bank and,
  - (ii) at its own discretion, to delay delivery of the service until the overdue amount plus accrued interest is paid in full. index may require prepayment for services to be delivered.
- e. index reserves the right to adjust the Remuneration payable if costs are reduced or increased after the contract is entered into,
  - (i) owing especially to changes in the law,
  - (ii) owing to changes in the price of third-party services necessary for delivery of the service,
  - (iii) owing to breach of contract by the Client (or a third party representing the Client) in providing incorrect, insufficient or delayed information, or owing to other circumstances beyond index's control.

**6. Warranties, liabilities and complaints**

- a. index will make every effort to deliver the services offered with due care and attention. However, the content, accuracy, scheduling, duration and scope of the services may be adversely affected by factors for which index is not responsible. All information given regarding scheduling and duration is therefore intended to be for planning purposes only, unless the parties agree in writing that deadlines are of the essence.
- b. Analyses, studies and assessments produced by index contain subjective evaluations based on index's experiences and on raw data collected through random sampling and deemed relevant by index, which has been compiled and processed using statistical methods. This data compiled by index is subject to a statistical margin of error and other statistical and/or econometric factors. index is not liable for any inexactitude inherent in the nature of the method or the statistical process, or in the execution or evaluation of the process; i.e. an inexactitude that is unavoidable in practice and is common knowledge.
- c. Data and information supplied by index are based partly on surveys of companies and therefore contain objective and subjective evaluations by the company concerned and its

- employees. index warrants only that the information it has provided based on company surveys has been accurately presented and evaluated in a reasonable manner. index accepts no liability for the correctness of the information obtained through company surveys on which index has based its presentation, since index's responsibility is limited to presenting and evaluating the information provided to it via company surveys.
- d. In particular, no warranty is given in respect of:
- (i) the accuracy, currency and completeness of the information provided and statements made in the course of company surveys;
  - (ii) data errors, data damage or data loss resulting from use by the Client;
  - (iii) any third-party information accessible via links, and the content of linked web pages;
  - (iv) any damage caused to the Client's hardware or software by accessing information via index's website;
  - (v) any losses suffered by the Client as a result of downloading software or other data.
- e. The existence of a contract will not prevent index and its associated companies from, or restrict them in, using the work and their experiences for the benefit of other clients, providing similar or identical services to other clients, or producing similar reports for other clients, irrespective of whether these other clients operate in the same sector as the Client.
- f. Furthermore, index will not be prevented from or restricted in publishing or providing market research data or other products and services. Modifications or enhancements made to database functions by index at the Client's request may also be offered to other clients by index unless otherwise agreed.
- g. The Client indemnifies index against any demands, claims, liabilities, losses, damages or expenses (including legal and consulting fees) that index may incur if the Client publishes or uses data in contravention of this contract, or if the data is published by a company associated with the Client.
- h. Claims for damages against index on the grounds of active breach of conditions, culpa in contrahendo or unauthorised action will be valid only in cases of wilful intent or gross negligence on the part of index, its representatives or agents. This does not apply to liability for warranted characteristics or to contravention of essential contractual obligations; in the latter case, liability is limited to foreseeable losses. Claims for damages due to impossibility of performance and delay, in cases of slight negligence, will be limited to the amount of foreseeable losses.
- i. In the event of gross negligence by a vicarious agent, the amount of liability is limited to foreseeable losses. This does not apply to contravention of essential contractual obligations.
- 7. Late performance and non-performance**
- a. Performance and delivery dates are valid only when they have been expressly confirmed by index.
- b. If index is late in delivering its services, it must first be granted a reasonable grace period. If the grace period passes to no avail, the Client may withdraw from the contract. No compensation will be paid for delay-related losses. Any data supplied by the Client will be returned in a widely usable format.
- c. If completion of a project is delayed owing to force majeure such as unrest, natural disasters or similar events, or if the website, and especially its secure private area, is unavailable for such reasons, index's obligation to perform will be suspended for the duration of these circumstances. The same applies if third-party providers fail to deliver, if other means of communication break down, or if index experiences a hardware or software failure, provided index is not responsible for the situation. In these circumstances the Client is not entitled to claim damages for non-performance.
- 8. Place of performance, jurisdiction**
- a. For business-to-business transactions with registered businesses, legal entities under public law and special trusts under public law, the agreed place of jurisdiction for any legal action will be the head office of index. In cases where index has not asserted its claim by obtaining an out-of-court payment order, the place of jurisdiction for non-business clients will be their place of residence.
- b. The place of performance is the head office of index Internet und Mediaforschung GmbH, Berlin.
- c. German law applies.

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