

## **General Terms and Conditions of keyfacts Onlineforschung GmbH (hereinafter “keyfacts”)**

Unless as otherwise provided in any other written agreement between keyfacts and the Client, these General Terms and Conditions shall constitute the general terms and conditions governing any contractual agreement between keyfacts and the Client. Application of the general terms and conditions of the Client shall be excluded. This shall hold also in the event that keyfacts does not expressly object to the applicability of such terms and conditions in their entirety or to individual provisions thereof.

### **§ 1 General Principles of Performance**

- 1.1 keyfacts executes the projects for which it has accepted a commission as consultancy services in accordance with the principles and methods of the market and social research profession. Specific results shall not be guaranteed. keyfacts shall provide support for the Client in making decisions. keyfacts shall not make these decisions.
- 1.2 The content and scope of the services performed by keyfacts shall be governed exclusively by the relevant project quotation as accepted by the Client by means of a confirmation of commissioning, including these General Terms and Conditions.

### **§ 2 Quotation, Conclusion of Agreement and Scope of Performance**

- 2.1 keyfacts shall submit to the interested party a quotation in the form of a project proposal and a time schedule defining the terms of reference, the services to be performed, the time required and the fee payable. The quotation from keyfacts may not be published or passed to third parties without the consent of keyfacts.
- 2.2 The Client shall unbidden disclose the objectives of the research to be undertaken insofar as and as soon as this shall become necessary for due performance of the contract by keyfacts.
- 2.3 Rights of exclusivity shall require separate written agreement explicitly laying down the duration and scope of the exclusivity and any additional fee payable.

### **§ 3 Pricing, Basis of Calculation**

- 3.1 The price of services performed by keyfacts are calculated on the basis of the following factors:
  - 3.1.1 Incidence: the percentage share of the target group within a predefined population. A preliminary value for incidence shall be set in the quotation. In the event that a different incidence occurs in point of fact during the performance of the contract, keyfacts shall be have the right to adjust the price of those elements of the compensation affected at equitable discretion (§ 315 BGB). The incidence achieved in point of fact in the field shall be ascertained and determined by keyfacts. The incidence fee shall be calculated in accordance with industry standards using the following formula: total number of fully completed questionnaires divided by the sum of all fully completed questionnaires (“completes”) and all participants excluded in screening (“screenouts”).
  - 3.1.2 Questionnaire length: the expected time a test person will need on average to answer the questionnaire (median).
- 3.2 Insofar as elements of compensation are calculated on the basis of complete answers, the number of properly completed surveys (“valid answers”) shall be decisive. It shall also be deemed a valid answer if, on grounds of design input by the Client, such as the inclusion of questions close to the end of the questionnaire which regularly lead to premature termination of the survey (e.g. elicitation of personal data), the questionnaire tends to preclude the proper conclusion of the survey and thus prevent the registration of the test person’s responses as a valid answer. The Client shall bear the burden of proof that such a design fault is not at hand. Any doubts shall be at the detriment of the Client.
- 3.3 In the event that an unusually high premature termination ratio (greater than 10%) is registered and this cannot be traced to technical problems in the work done by keyfacts, the fault (e.g. technical problem(s), unclear or overlong questionnaire etc) shall be assumed to be in the Client’s work. In such an event, keyfacts shall have the right to charge a fee of 50% of the relevant compensation for

a valid answer insofar as the Client does not provide evidence that the circumstances in question did not originate in the Client's sphere of responsibility. The fee for premature terminations shall be calculated according to the following formula: the number of premature terminations divided by the total number of all questionnaire starters.

- 3.4 In the case of projects which are not programmed by keyfacts and thus not executed on keyfacts's server ("sample only"), the quotas and the overall project are to be closed by the Client. keyfacts shall charge a fee for any interviews generated over and above the desired number.
- 3.5 In the event that compensation or elements of compensation have been proposed on a "best-efforts basis", keyfacts shall not guarantee a minimum number of valid answers and shall charge a fee on the basis of the valid answers.

#### **§ 4 Execution**

- 4.1 Should it transpire after commissioning that the project cannot be executed for methodological reasons which neither the Client nor keyfacts could have foreseen and for which neither are liable (e.g. the predetermined number of interviewees cannot be achieved), keyfacts shall inform the client without delay. If neither party provides a methodological solution to the problem, keyfacts shall have the right to return the commission on grounds that is not executable. keyfacts shall be compensated pro rata for costs incurred until that point, with a minimum charge of 300.00 EUR.
- 4.2 The Client shall without delay after confirmation of the commission provide keyfacts with all information and documentation required by keyfacts for the execution of the commission. The Client shall also inform keyfacts of all occurrences, transactions and activities significant for the execution of the commission, even in the event that these circumstances become known only during the execution of the commission. The Client shall ensure the correctness of all information, data and instructions transmitted by it. The Client shall bear additional costs incurred by keyfacts in the event that work is to be repeated due to incorrectness, incompleteness or subsequent amendment of the details provided.
- 4.3 The Client shall guarantee that neither the materials provided by it, nor their use within the framework of this agreement, nor the proper execution of the commission is in violation of applicable law or in infringement upon third party rights of any kind (e.g. industrial property rights, copyright, personal rights, informal right of self-determination).
- 4.4 The Client shall exercise no influence over the number of valid answers, in particular in by placing screenout questions at the end of a questionnaire so that a premature termination occurs at a late stage of the survey.
- 4.5 keyfacts shall have the right to enter into agreements with subcontractors in order to fulfil its obligations within the research commission.
- 4.6 In the event that the Client stipulates a specific sub-contractor, keyfacts shall not be liable for the correctness, completeness or quality of that sub-contractor's work unless there is a breach of duty on the part of keyfacts.
- 4.7 Each party may terminate the contract with notice to the other party at least seven days in advance. All other rights of termination shall remain unaffected. keyfacts shall be compensated pro rata for costs incurred until that point, with a minimum charge of 300.00 EUR.

#### **§ 5 Fees**

- 5.1 Fees stated in the quotation shall be understood to cover all services offered by keyfacts in connection with the execution of the commission outlined in the quotation. keyfacts shall have the right to charge an extra fee for all supplementary services requested by the Client. The agreed fees shall be understood as exclusive of statutory value added tax at the applicable rate.
- 5.2 Additional costs for which keyfacts is not liable and which keyfacts could not have foreseen at the time of commissioning despite the exercise of due care may be invoiced separately if they attach to a legitimate objective reason, are clearly apparent to the Client and are sufficiently definite. This shall also apply in the event that the Client is not responsible for these costs.
- 5.3 The fee is normally payable upon conclusion of the project. Insofar as not otherwise agreed in writing, 50 percent of the agreed fee for projects valued at € 10,000 and above shall be payable upon commissioning, and 50 percent at delivery of the research results.

- 5.4 The fee shall be payable without deductions within 14 days of the invoice date. In the event of delay in payment, keyfacts shall have the right to charge interest on arrears at the statutory rate. keyfacts reserves the right to withhold performance in the event of default.
- 5.5 The client may offset arrears against any counterclaims only in the event that the counterclaims are uncontested or have been judicially established as absolute.

#### **§ 6 Default**

- 6.1 In the event that the Client is in default with respect to the provision of information and/or documents necessary for the performance of the research, keyfacts shall not be obliged to observe agreed terms and dates of delivery and performance. In the event that the Client does not after an appropriate period of grace comply with its obligation to cooperate, keyfacts shall have the right to terminate the contractual relationship for cause and to claim for damages.
- 6.2 In the event of delayed delivery, keyfacts shall be liable only for default. The Client shall have the right to claim only in accordance with the stipulations of § 8 above of these General Terms and Conditions.
- 6.3 In the event that agreed delivery dates are not observed on grounds of delay caused by force majeure, unrest, strike, acts of state, lock-outs or disruption of operations at subcontractors for which keyfacts is not liable, the period of performance shall be extended by the period elapsed until the disruption is removed. keyfacts shall inform the Client of the beginning and end of the disruption.
- 6.4 In the event that disturbances caused by force majeure or other disruptions for which keyfacts is not liable are permanent, keyfacts shall have the right to terminate the contractual relationship for cause at the exclusion of any and all claims for damages.

#### **§ 7 Use of Research Reports and Research Results**

- 7.1 Reference to keyfacts may be made in comparative advertising only with the express permission of keyfacts, to be granted by keyfacts in writing after keyfacts has approved the specific text to be published.
- 7.2 The use of research reports and research results in preparation of proceedings of a legal nature (e.g. court proceedings, arbitration proceedings, administrative proceedings) shall not be permitted without the prior written consent of keyfacts, save for when legal / administrative provisions or judicial rulings have precedence.
- 7.3 In the event that the Client intends to cite the whole or parts of the research report, the Client shall make the citation clearly visible as such and shall name keyfacts as the author of the research report.
- 7.4 The Client shall indemnify keyfacts irrevocably and immediately upon request against all claims made against keyfacts in the event that the Client uses the correctly obtained results with malice aforethought or with gross negligence, particularly in unlawful and/or false advertising.

#### **§ 8 Product Tests**

- 8.1 The Client shall indemnify keyfacts from all claims for damages caused by the product to be tested that shall be brought against keyfacts or employees of keyfacts.
- 8.2 The Client shall bear responsibility for ensuring that all required chemical, medical, pharmaceutical and other testing / examination / analysis has been carried out with regard to the product to be tested. The Client shall bear responsibility for ensuring that the product is fit for testing and that, in the event that prior testing / examination / analysis is required and has taken place (see above), this testing has not indicated that the product may cause damage of any kind. The Client shall bear responsibility for ensuring that all information relating to the use of the product required by law or regulations has been provided to keyfacts in order that keyfacts may pass this information to the participants in the test.
- 8.3 Without prejudice to wider rights, keyfacts shall have the right to refuse to perform or continue a product test in the event that reasonable doubts regarding safety, lawfulness or other justified concerns exist or arise.
- 8.4 In all other events, the provisions of the German Product Liability Act (Produkthaftungsgesetz) shall apply.

## **§ 9 Rights, Discretion**

- 9.1 keyfacts shall retain all rights to which it is entitled according to copyright law. The Client shall acknowledge that sole copyright and all property rights pertaining to research concepts, proposals, methods, procedures and processes, graphic and tabular depictions originating with keyfacts, and expertise embodied in other services provided by keyfacts are the exclusive property of keyfacts. The copyright pertaining to documents created by the Client shall remain unaffected.
- 9.2 The Client shall guarantee through suitable agreements with its personnel that the rights of keyfacts are not encumbered, impeded or infringed. The Client shall demonstrate when requested by keyfacts that such agreements have been concluded separately with its personnel who are engaged in the project.
- 9.3 All material arising in connection with the execution of the project – all forms of data carrier, questionnaires, other written documentation etc – and the data collected shall remain the property of keyfacts unless otherwise agreed. Any such agreement shall not endanger the anonymity of the interviewees or test persons.
- 9.4 All reports, documentation and accompanying material passed to the client shall become the property of the client only when all claims filed by keyfacts have been fully discharged. Data sets obtained by means of pre-screening, i.e. outside the context of the Client's questionnaire, shall remain the property of keyfacts.
- 9.5 keyfacts and the Client shall maintain strict confidentiality with respect to all information exchanged in the context of the execution of the commission and shall utilize such information solely for execution of the commission. The personnel of both the Client and keyfacts shall be bound accordingly. This provision shall also apply for the period after the execution of the commission. The provision shall not be applicable with regard to information that the other party can demonstrate was known prior to receipt or was available to the general public after receipt but where the receiving party was not responsible for this public availability.

## **§ 10 Warranty and Liability**

- 10.1 The liability of keyfacts and the rights of the Client to claim for defects shall be in accordance with statutory regulations insofar as not stated otherwise below.
- 10.2 The Client shall be obliged to inspect the performance and results of keyfacts without delay. In the event that claims are not notified without delay in writing at least, performance shall be deemed to have been done as contractually agreed.
- 10.3 The period of warranty shall commence with receipt of the last legally relevant data and shall last twelve months.
- 10.4 keyfacts shall not be liable for losses incurred through the interpretation by the Client of the data / results unless keyfacts is found to be in breach of duty.
- 10.5 keyfacts shall not be liable to the Client for losses, damage, costs, expenses or other claims arising from information or data supplied by the Client which was incomplete, incorrect, inaccurate, unreadable, in the incorrect order, in the wrong format or impaired in any other way.
- 10.6 Claims for damages on the part of the Client against keyfacts or its legal representatives or agents shall exist only in cases of culpable injury to life, body or health, culpable violation of material contractual obligations, deliberate or grossly negligent violation of duty by keyfacts, its legal representatives or agents, or fraudulent concealment of defect in the research.
- 10.7 In the event of loss caused by negligent breach of material contractual obligations, keyfacts shall be liable only for foreseeable damage typical of the contract. The amount of damages shall be limited to the overall net fee agreed for that project. Compensation for indirect loss and unforeseeable consequential loss shall be excluded.
- 10.8 The Client shall upon request irrevocably and without delay indemnify keyfacts against any and all claims asserted by third parties against keyfacts and against damages and costs (including reasonable costs for the defence and assertion of legal rights) which may arise in connection with an alleged infringement by the Client of a guarantee issuing from this agreement.
- 10.9 In the event that a claim of breach of duty by keyfacts is filed against the Client and the Client intends to pursue keyfacts in this connection, keyfacts shall be informed at the earliest possible date. keyfacts shall have the right to conduct or oversee the legal dispute. This right of keyfacts shall not affect the rights of defence of the Client.

## **§ 11 Data Protection and Confidentiality**

- 11.1 The parties shall observe the data protection regulations applicable in the Federal Republic of Germany, in particular the provisions of the Data Protection Act (Bundesdatenschutzgesetz, BDSG) and the Telemedia Act (Telemediengesetz, TMG). The parties shall undertake all economically reasonable efforts to protect the confidentiality and integrity of participants' data and in all events to utilize the same protective measures as are used to secure the parties' own confidential information and commercial secrets. In the particular event that the Client receives personal details of a participant from keyfacts, the Client shall treat this data in strict confidentiality, not pass it to third parties nor grant access to it in any other way.
- 11.2 Insofar as the participant has not given his express or sufficiently express consent to keyfacts and insofar as consent was obtained by the Client independently of keyfacts's activities on behalf of the Client, the Client shall not without the prior written consent of keyfacts contact the participant again via any channel of communication, regardless of whether the contact is for market research, opinion polling or for any other purpose. The Client shall under no circumstance itself or through a third party attempt to obtain personal details of participants in the context of the execution of surveys unless these details are collected for the sole purpose of contacting the Client in direct connection with the answers given in the context of a survey. Any other use by the Client of the data raised for the express purpose shall not be permitted. The Client shall pledge this.
- 11.3 The Client shall pledge that all personal data received will be used and in particular processed solely for the purpose(s) laid out in the commission. Directly after the purpose(s) has or have been achieved or in the event that a participant withdraws his consent to the use of his data, the data shall be deleted completely, all copies destroyed and keyfacts informed without delay. In the event of (culpable) breach of the above obligations and guarantee, the Client shall be liable to pay a contractual penalty of € 10,000.00 per case. Other rights are not affected.

## **§ 12 Place of Performance and Venue, Applicable Law**

- 12.1 Place of performance and sole venue shall be Leipzig.
- 12.2 The contractual relations between keyfacts and the Client shall be governed by the laws of the Federal Republic of Germany without giving effect to its provisions in law of conflicts.
- 12.3 Amendments and supplements to this agreement shall require written form to be valid. The same shall apply to any agreement setting aside this provision.
- 12.4 Written form in the terms of these General Terms and Conditions shall be understood to include telefax and email transmissions except in the event of termination of contracts.
- 12.5 Should a provision of the agreement between keyfacts and the Client be or become invalid, this shall not affect the remaining provisions of the agreement. The parties shall attempt to replace an invalid provision with a valid provision that most closely meets the commercial intention of the invalid provision.
- 12.6 This English translation is for the purpose of information only: in cases of dispute, the original German text shall be applicable.