



**Finnwaa GmbH**

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## **General Terms and Conditions of Business**

### **§ 1 General**

1. These terms and conditions (hereinafter ToC) apply exclusively to the services offered by us, Finnwaa GmbH, in the field of Search Engine and/or Social Media Advertising (SEA / SMA). Any terms and conditions that differ from or contradict these terms and conditions will not be recognised by us unless we have expressly agreed to them in writing.
2. These ToC shall also apply to all our future consulting contracts and also if we provide services for the customer in the knowledge of deviating or conflicting terms and conditions. Changes to these ToC will be communicated in writing, by fax or by e-mail. If the customer does not object to these changes within four weeks after receipt of the notification, the changes shall be deemed accepted. The customer will be informed separately about the right of objection and the legal consequences of silence in the event of a change in the ToC.
3. The services we offer are basically divided into account-related consulting services in the areas of SEA and SMA. The exact scope of services results from our respective offer on which these ToC are based.
4. These ToC shall only apply to companies, legal entities under public law or special funds under public law within the meaning of § 310 1 BGB (German Civil Code).

### **§ 2 Consulting Services / Fulfilment**

1. The aim of our consulting services is to improve the customer's presence with the search engine or portal operators selected by him. If agreed, we support the customer in the development of advertising texts, taking into account the known search strategies of the respective search engine or social network. These ad texts appear contextually on the websites of the search engine or portal operators and are linked to the customer's website by means of hyperlinks. Unless expressly agreed otherwise in writing, we do not check whether the contents or pages registered with the search engine or portal operators on behalf of the customer infringe the rights of third parties.
2. The customer is aware that we only owe our services, but not success in the sense of a certain ranking or even a measurable increase in turnover.
3. The fulfilment of our consulting services requires the timely and proper fulfilment of the customer's obligations. We reserve the right to the defence of non-performance of the contract.
4. Customer specifications for the implementation of our consulting services are generally non-binding. If we are of the opinion that the way of implementation requested by the customer is

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Commercial register at the local court in Jena, HRB 500693

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illegal, we will inform the customer. In this case we will only implement the measure if the customer expressly releases us from any liability in writing.

5. In the event of default of acceptance or other culpable breach of cooperation obligations on the part of the customer, we shall be entitled to compensation for the resulting damage, including any additional expenses. We reserve the right to assert further claims.
6. The fulfilment of our consulting services further requires that access to the search engines or portals is possible and that our consulting services are not made impossible or unreasonably difficult by measures taken by the search engine or portal operators.

### **§ 3 Duties and rights of the customer to cooperate**

1. The customer is obliged to fulfil his contractually agreed cooperation obligations. We are entitled to demand support services or cooperation from the customer even if the specific support management was not originally agreed, but is necessary in our opinion within the scope of the consulting project and the support service or cooperation does not place an unreasonable burden on the customer. In particular, the customer shall provide all data and documents necessary for SEA or SMA free of charge.
2. If our services consist in the preparation of concepts or analyses or the support of the customer in their elaboration, the customer will provide the necessary cooperation and take measures to implement the concepts within the scope of what is economically reasonable.
3. The customer is the contractual partner of the respective search engine or platform operator regarding the account required for the advertising measures. He undertakes to ensure that all messages from the search engine or platform operator are forwarded to us during the contract period.
4. As the account holder, the customer can arrange for advertising measures directly with the search engine or platform operator. The customer will inform us of such measures immediately. However, the customer will not entrust third parties with the same or similar consulting services for the account registered by us during the term of the contract.
5. If the customer does not or not sufficiently fulfil his obligations to cooperate, we shall be released from our performance obligations for this period of time to the extent that the respective services cannot be provided or can only be provided at disproportionate expense due to the non-fulfilment or inadequate fulfilment of the obligations to cooperate.
6. In addition to the agreed lump-sum remuneration, the customer is obliged to reimburse us for all additional expenses incurred by us as a result of a culpable breach of the obligations to cooperate on the basis of our current standard remuneration rates. Further rights of us remain unaffected by this.

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## **§ 4 Change in the Scope of Services**

Changes to the agreed scope of services must always be made in writing and only become effective if they are countersigned by our management.

## **§ 5 Prices and Payment**

1. Our prices do not include the VAT and do not include the fees charged directly by the respective search engine or portal operators.
2. Invoices are issued monthly and are due for payment within ten days of the invoice date. After the due date, interest on arrears can be charged at a maximum of 8% above the respective base rate p.a. We reserve the right to assert further damage caused by default.

## **§ 6 Offer, Acceptance and Conclusion of Contract with the search engine / portal operator**

1. Unless otherwise agreed, we are bound to our offers for a period of 2 weeks. For the acceptance of the offer it is sufficient if the customer declares his agreement on the offer form, signs it with place and date and sends us the offer countersigned in this way at least by fax.
2. Insofar as the agreed consultancy service includes the opening of a user account with a search engine or portal operator, we act in the name of and on behalf of the customer; a corresponding account contract is therefore concluded directly between the customer and the search engine or portal operator. For this contractual relationship, the General Terms and Conditions of the respective portal or search engine operator apply exclusively.

## **§ 7 Compliance with Legal Requirements**

1. The legal responsibility, in particular the responsibility under telemedia and press law as well as trademark, competition and remedy advertising law for the content of the advertisements and the search terms as well as the further measures commissioned by the customer, is borne exclusively by the customer. The customer is obliged to carefully check and ensure that the contents do not violate legal regulations or recognized rules of conduct of professional associations.
2. The customer assures that he is the owner of all rights necessary for the provision of the contractual services, in particular that he has the necessary copyrights, trademark rights, ancillary copyrights, personal rights and other rights and can transfer them to us for the purpose of fulfilling the contract, in terms of time, place and content, to the extent necessary for the execution of the contract.

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## **§ 8 Rights of Use**

1. The customer grants us all rights of use in copyrights, ancillary copyrights and other industrial property rights, in particular the right to duplicate, distribute, make publicly available and process, in terms of time, place and content, to the extent necessary for the execution of the contract. The granting of rights shall also include the right to transfer or sub-license the aforementioned rights of use to third parties commissioned to perform the contract and to grant the search engine operators the rights required for search engine marketing. The rights of use to be granted to us are simple rights of use.
2. We retain all copyrights, ancillary copyrights and other rights to the analyses and concepts prepared and, if applicable, implemented by us and/or third parties on our behalf. However, we grant the customer the simple, temporally and locally unlimited right to use the analyses and concepts as well as their implementation in the work results to the extent necessary for SEA / SMA.
3. If third parties assert claims against us with the allegation that the context-related presence of the customer violates legal provisions and/or infringes their rights, the customer shall indemnify us from all claims of third parties at first request and reimburse us for any costs and damages going beyond this, in particular indemnifying us from the costs of an appropriate legal defence. The customer is obliged to support us within the scope of what is reasonable by providing us with information and documents in the legal defence against the third parties. The provisions of this paragraph shall apply accordingly if third parties assert claims against us due to non-compliance with the customer's assurances under § 7.
4. We are entitled to use the customer as a reference in our marketing documents.

## **§ 9 Liability**

1. The contracting parties shall be liable to each other without limitation for damages caused intentionally or by gross negligence as well as for damages caused intentionally or by negligence resulting from injury to life, body or health.
2. The liability for product liability damages is determined according to the regulations of the product liability law.
3. In the case of damages caused by slight negligence, the contractual partners shall only be liable in the event of breach of cardinal obligations. Cardinal obligations are the essential obligations which form the basis of the contract, which were decisive for the conclusion of the contract and on whose fulfilment the respective contractual partner may rely. In this case, liability is limited to the foreseeable damage typical for the contract.
4. The liability for indirect damages, such as lost profit, is excluded except in the cases of paragraph 1.

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5. Insofar as the liability of the contractual partners is excluded or limited, this also applies to the personal liability of the employees, workers, staff, representatives and vicarious agents of the contractual partners.
6. Liability or the claim for damages in the event of a temporary pause or blockage of the customer account with a portal or search engine operator (e.g. Google AdWords, Google Merchant Center Account, Facebook Ads Account) is excluded. We also assume no liability and possible damages in the event of a temporary suspension or deletion of the customer's Facebook page, as this is at the discretion of Facebook and the customer is the owner of the Facebook page. Further information can be found by the Facebook Page operator at:

[https://www.facebook.com/page\\_guidelines.php](https://www.facebook.com/page_guidelines.php).

## § 10 Automated Ad Extension

Within the campaign, the ads can be supplemented by automatic extensions. Through "Annotations" (Bing) and "Dynamic Snippet Extensions" (Google), additional information about your website is automatically displayed in the ads. The additional information is obtained directly by the provider from your website or from other sources (own offer pages and ad copies and domains to which your ad copy points). The extensions are automatically switched by Bing and Google. Finnwaa has no influence on the content of the automatic extensions, this is automatically generated by Google and Bing. We expressly point out that the automatic extensions may violate the rights of third parties (e.g. the trademark law). Finnwaa has no control over the content of the extensions and they are not part of this offer/contract. Use of the automatic extensions is at the customer's own risk. Further information is available at:

<https://support.google.com/adwords/answer/6098371?hl=en>

<https://help.bingads.microsoft.com/apex/index/3/en/51127>

If you want a campaign without automatic extensions, this must be deactivated actively.

## § 11 Duration and Termination of the Contract

1. The term of the contract generally begins at the time agreed by the parties. Unless the parties have agreed otherwise, the term of the contract shall commence upon conclusion of the contract on which these ToC are based. Unless otherwise agreed, the contract shall run for a period of three months.
2. The contract is renewed monthly if it is not cancelled by the last working day of the contract period. The cancellation must be made at least in text form (e-mail). If the customer terminates the contract, we will confirm receipt of the termination at least in text form and will not provide any further services upon termination of the contractual relationship.
3. The right of immediate termination for good cause remains unaffected. The right of immediate termination for good cause is established in our favour if the customer violates the obligation

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according to § 3 para. 4 of these ToC. In the event of such a termination, we shall be released from our performance obligations; however, the customer's obligation to pay for the originally agreed contractual period shall remain in force.

## **§ 12 Secrecy / Naming of the Contracting Party**

1. The customer undertakes to keep secret all business and trade secrets or information designated as confidential which he receives or becomes aware of during the performance of the contract from us or persons and partners acting on our behalf (such as Google Ireland Limited, Microsoft Bing Ads, Facebook, FinnwaaMedia), insofar as these are not generally known. This obligation shall not apply beyond the end of the contract.
2. Unless the customer has expressly objected, we are entitled to name the customer as a reference customer, to list the customer on our customer reference list for advertising purposes and to link to the customer's company website.

## **§ 13 Applicable Law and Jurisdiction**

1. Changes or additions to these ToC must be made in writing. This also applies to the cancellation of this written form requirement.
2. The customer is only entitled to offsetting if his counterclaims are undisputed or have been legally established. The customer shall only be entitled to assert rights of retention on the basis of counterclaims from the same contractual relationship.
3. This contract is subject exclusively to the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods.
4. Place of performance and exclusive place of jurisdiction for all disputes arising from or in connection with this contract is our registered office. However, we are entitled to sue the customer at his place of business.
5. Should individual provisions of this contract be ineffective or contradict the legal regulations, the rest of the contract is not affected. The ineffective provision shall be replaced by the parties to the contract by mutual agreement by a legally effective provision which comes closest to the economic sense and purpose of the ineffective provision. The above provision shall apply accordingly in the event of loopholes.

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