

## GENERAL TERMS AND CONDITIONS

as of March 2016

of

### **Ingenious Technologies AG**

(hereinafter referred to as "Ingenious")

Französische Straße 48

10117 Berlin

### **1. Scope**

The following General Terms and Conditions in the version valid at the time a contract is concluded shall apply exclusively to contracts between Ingenious and the contractual partner (hereinafter referred to as "Client"), especially regarding services in the context of the use of the Ingenious Technologies Software "Ingenious Enterprise" including Omni-Channel Tracking, Partnership Management, Billing & Accounting and modules of Finance-as-a-Service (hereinafter referred to jointly and individually as "Software"). Contradictory terms and conditions of the Client shall not apply, unless where Ingenious expressly consents in writing to their application.

### **2. Subject matter and conclusion of the contract**

- 2.1.** The subject matter of this contract is technical services in connection with the use of the Ingenious Technologies Software and customized consulting services as well as other services.
- 2.1.1.** Ingenious offers to its Clients a single, integrated solution consisting of Omni-Channel Tracking, Partnership Management and Accounting & Billing according to section 5 hereof.
- 2.1.2.** Insofar as the parties agree on using the Finance-as-a-Service-module, Ingenious provides additional services according to section 6 hereof.
- 2.1.3.** If the parties agree on consulting or operational services, the provisions of section 7 hereof shall apply additionally.
- 2.1.4.** If the parties agree on other services, the provisions of section 8 hereof shall apply additionally.
- 2.2.** The sending an order via letter, fax or email or, in case of an online booking, the sending of an online order request, shall be deemed to be an offer to enter into a contract by the Client. Such an offer of the Client makes reference to the respective services offered by Ingenious and includes these General Terms and Conditions. The acceptance of the offer by Ingenious may be given explicitly following its receipt and review either by sending an appropriate notice to the Client or by starting the performance of the service.

### 3. General rights and obligations of Ingenious

- 3.1. Ingenious shall provide the services agreed in the respective offer and take into account the Client's rights, legally protected rights and interests when providing the services.
- 3.2. Ingenious shall provide the Software as a software-as-a-service solution for access via the internet and shall grant the Client a right of use. The scope of performance of the Software results from these General Terms and Conditions and the respective offer.
- 3.3. Adjustment of the Software to the Client's specific needs shall be owed only if this is ordered separately and subject to the provisions of section 8 hereof.
- 3.4. Ingenious shall be entitled, but not be obliged, to change the Software, in particular to adjust it to technological advance. When the Software is changed, individual functions may change or no longer be made available. Ingenious shall give no less than two weeks' notice in an appropriate manner; for instance during the use of the software, to the Client of essential changes that fundamentally affect the Software's functionality.
- 3.5. If any changes are made to the Software, this may result in an impairment of the use of the Software by the Client. Ingenious shall strive to make such changes at night or at the weekend. Such changes must result in a temporary interruption or impairment of availability during usual business hours only where this is necessary for technical reasons. Periods of unavailability without warning shall be limited to a total of ten hours a month.
- 3.6. Ingenious shall provide to the Client a user manual in the form of a link or a PDF document which describes the essential functions of the contractual Software. Any further description of the Software shall not be owed.
- 3.7. Ingenious shall be entitled to advertise in a suitable manner with the fact that the Client has engaged the services of Ingenious and to this end shall be allowed to use the Client's logos and similar items in (online or offline) reference lists even after the end of the contract.
- 3.8. Unless expressly agreed otherwise in writing, Ingenious shall be entitled during the term and after the end of the contract to accept and process orders by clients active in the same or similar industry.
- 3.9. Ingenious shall be entitled to assume that any and all parameters which the Client itself defines within the Software (e.g. conditions, definitions, advertising materials) and the results automatically created by the Software which are based on them are complete and correct. In particular, Ingenious shall not be obliged to verify the conditions and automatic results.

## 4. General rights and obligations of the Client

### 4.1. Definition of the parameters

- 4.1.1. The Client shall be responsible for the definition of the parameters necessary to use the Software (including management of advertisers or partnerships).
- 4.1.2. The Client is aware that the results determined by the Software are based on a fully automatic process taking account the conditions defined by the Client.

### 4.2. General duties to cooperate

- 4.2.1. The Client undertakes to support Ingenious in the best possible way and comprehensively in the performance of the contractually agreed services. This duty of cooperation shall in particular include the timely hand-over of necessary information and documents.
- 4.2.2. The Client is obligated to provide truthful and accurate relevant contractual information, especially concerning the performance-based billing (e.g. definition of parameters according to section 4.1 hereof). The Client warrants not to enter into any agreements or deals with its customers or partners which disadvantage Ingenious contrary to good faith.
- 4.2.3. The Client shall bindingly name at least one contact for Ingenious who shall be authorised and able to make all decisions to be made in the context of this contract and communicate them to Ingenious.
- 4.2.4. It shall be the Client's responsibility to ensure that regular backups are made of the data stored by it when using the Software.
- 4.2.5. The Client shall be responsible for all actions of its customers, other partners and representatives within the scope of this agreement. Any such actions will be attributed to the Client as its own behaviour as the case may be.

### 4.3. Access data

- 4.3.1. The Client warrants, that only authorized and trained personnel (section 4.8 hereof) will access and use the Software.
- 4.3.2. Ingenious shall inform the Client of the individual access data in due time after conclusion of the contract and after completing the training according to section 4.8 hereof.
- 4.3.3. The Client shall store its access data carefully and protect it against unauthorised third-party access. The Client shall accept that all actions taken by using the access data shall be regarded as actions taken by itself. The Client shall not be entitled to disclose its access data to a third party.
- 4.3.4. Where the Client, with the consent of Ingenious, gives access data to a third party (e.g. employees, service providers or customers), the Client shall be responsible for all actions such a third party takes using the access data. The Client shall familiarise the third party with the use of the Software, explain the meaning of the actions which can be taken, oblige the third party to store the access data carefully and protect it

against third-party access and expressly prohibit disclosure of the access data to other persons. The Client shall accept that all actions taken by using this access data as well shall be regarded as actions taken by itself.

#### **4.4. Payment of the remuneration**

**4.4.1.** The Client shall be obliged to pay to Ingenious the agreed remuneration when due subject to the provisions of section 9 hereof.

#### **4.5. Reimbursement of the cost of SSL certificates**

**4.5.1.** Ingenious provides Tracking using the Client's domain. As far as Ingenious buys wild card SSL-certificates for the Client. The costs resulting therefrom are to be prepaid by the Client for a period of one year. The provisions of section 9 hereof apply accordingly.

#### **4.6. Source code and use of the Software**

**4.6.1.** The Client shall have no right to claim surrender of the Software's source code. The Client shall not be entitled to obtain access and/or change the source code in any way whatsoever. Furthermore, the Client shall not be entitled to reproduce or alter the Software or to grant third parties access to the contractual Software except for the agreed purpose of the contract.

**4.6.2.** The use of the Software shall be permitted solely for the purposes defined within the contractual agreement (Section 5 hereof). In case of abusive use by the Client, its partners or representatives, Ingenious shall be entitled to suspend the execution of the order until the Client, its partners or representatives refrain from misusing the software.

#### **4.7. Indemnification**

**4.7.1.** The Client shall indemnify Ingenious from any and all claims which may be raised against it by a third party based on an alleged or actual infringement of a right by the Client and/or its partners and/or representatives and/or any third-party rights and undertakes to reimburse Ingenious for any costs which Ingenious may incur due to such claims by a third party. Reimbursable costs shall in particular include the costs of suitable legal action and legal defence.

#### **4.8. Training**

**4.8.1.** The Client ensures that personnel using the Software (especially employees, service providers and customers) participate in training programs provided by Ingenious and achieve the corresponding certificates. Personnel without going through the training program must not use the software.

**4.8.2.** The prices of the corresponding trainings are those stated in the valid price list.

## **4.9. Data protection**

**4.9.1.** Data protection is the highest priority for ingenious. The Client is obligated to comply with all applicable data protection regulations and to apply all appropriate technical and organisational measures to protect data against loss, unauthorized access and other risks while using the Software. Any security problems related to data protection must be reported to Ingenious immediately.

## **5. Ingenious Enterprise**

### **5.1. Partnership Management**

#### **5.1.1. Use of the Software by the Client**

The purpose of using the Software is the management of the Client's partners within a private program or a private network or public network. The Software helps the Client to manage online advertising campaigns by means of partnerships defined by the Client and success-related events generated by these parameters (hereinafter referred to as "KPIs", e.g. sales, leads, transactions, conversions, clicks, views).

#### **5.1.2. Relationship with the Client's partnerships**

It is the sole responsibility of the Client to select the partners of its private program or private network or public network and to initiate, contractually design and carry out a campaign with the respective contractual partner.

#### **5.1.3. Self-administration of partnerships**

The Client shall administrate the online marketing campaigns and the participating partners itself and be responsible for defining both the details of the campaigns (e.g. kind of advertising materials) and the terms and conditions, in particular KPIs for and commissions of the contractual partners, in connection with the Software. It shall be the sole responsibility of the Client to administrate the confirmation or rejection of KPIs. If KPIs are not rejected, the maximum time limit for a deemed confirmation is 60 days.

#### **5.1.4. Tracking**

**5.1.4.1.** An element of the Software is the option to track KPIs defined by the Client. The tracking system provided by Ingenious is being used for this.

**5.1.4.2.** The Client warrants comprehensive cooperation in performing the tracking. In particular, the Client shall integrate the appropriate tracking codes (container tags) on the target pages as scheduled and specified by Ingenious and ensure the permanent and reliable delivery of the tracking codes.

**5.1.4.3.** If the tracking is impossible for reasons within the scope of the Client's or one of the Partner's responsibility (e.g. because of an invalid SSL-Certificate, changed DNS-settings or other failure of Shops, Websites or

other advertising material by negligence), this does not damage Ingenious' right to remuneration. The level of remuneration for the time period of tracking break-down is estimated on the basis of the average of the past three months.

- 5.1.4.4. The Client shall not do anything that may interfere with the tracking. The parties hereto shall inform each other if it becomes apparent that the tracking is impaired for whatever reason.

## **5.2. Omni-Channel Tracking**

- 5.2.1.** Ingenious enables the Client to track the results of the online marketing measures agreed with its partners (Omni-Channel-Tracking with optional attributions). The details result from the offer.
- 5.2.2.** Ingenious shall acquire the necessary data and provide it in the evaluation tool. The Client itself shall be responsible for setting the parameters prior to this.
- 5.2.3.** The Client undertakes to give its comprehensive cooperation for the Omni-Channel Tracking. In particular, the Client shall integrate the appropriate tracking codes (container tags) in all relevant places as scheduled and specified by Ingenious and ensure the permanent and reliable delivery of the tracking codes
- 5.2.4.** If the tracking is impossible for reasons within the scope of the Client's or one of the Partner's responsibility (e.g. because of an invalid SSL-Certificate, changed DNS-settings or other failure of Shops, Websites or other advertising material by negligence), this does not affect Ingenious' right to remuneration. The level of remuneration for the time period of tracking break-down is estimated on the basis of the average of the past three months.
- 5.2.5.** The Client shall not do anything which may interfere with the Omni-Channel Tracking and, where necessary, oblige partners in this respect.
- 5.2.6.** The parties hereto shall inform each other if it becomes apparent that the Omni-Channel Tracking is impaired for whatever reason.

## **5.3. Accounting & Billing**

- 5.3.1.** Ingenious shall support the Client with the accounting of commissions and the handling of payments agreed in the contracts concluded between the Client and partners or partners between themselves.
- 5.3.2.** Ingenious shall unambiguously assign each KPI recorded to the participating partners and represent the respective transactions clearly and in such a way that they can be checked for a certain period.
- 5.3.3.** The transactions recorded shall be compiled in electronic documents that can be used directly as accounting vouchers depending on the accounting system used by the Client or the partnership. A prerequisite to the creation of proper vouchers by Ingenious is that the data of all participating partnerships is updated by the Client in due time and correctly.
- 5.3.4.** Ingenious is not obligated to retroactively take into account any changes in the

advertisement partner's fiscal status according to the applicable tax laws. This applies particularly if the threshold according to the small settlement provision in the German UStG Section 19 is exceeded.

## 6. Finance-as-a-Service (Payment & Accounting)

The following shall apply additionally where the parties agree to the use of Finance-as-a-Service:

### 6.1. Essential content of the service and prerequisites to use

- 6.1.1. Ingenious shall support the Client with the accounting of the handling of payments agreed in the contracts concluded between the Client and partners or partners between themselves.
- 6.1.2. As a technical service provider of the Client, Ingenious shall primarily forward via an interface (API) the results automatically generated by the Software to a bank determined by Ingenious (hereinafter referred to as "Bank"). This in particular includes the forwarding to the Bank of the information about the KPIs confirmed by the Client when using the Software. Moreover, the Software automatically generates payment overviews or journals for the partners and makes them available to the Client in a digital format.
- 6.1.3. A prerequisite to using Finance-as-a-Service is the conclusion of a contract on the opening and maintenance of a business bank account for payment services within the scope of the Finance-as-a-Service (hereinafter referred to as "Account Agreement") with the Bank at the Banks' terms and conditions as amended from time to time, by which the Client becomes holder of a business account. If the Account Agreement no longer exists, all the performance obligations of Ingenious in relation with the use of Finance-as-a-Service shall cease to exist. The payment itself is handled by the Bank on behalf of the Client.
- 6.1.4. Ingenious shall not be obliged to check the results determined by the Software.
- 6.1.5. The handling of payments by the Bank is not the subject matter of this agreement.
- 6.1.6. By using Finance-as-a-Service and confirming KPIs, the Client may give payment instructions directly to the Bank. The information is forwarded automatically via the API when the Software is used. During this process Ingenious shall neither act as a representative nor as a messenger but solely as a technical service provider.
- 6.1.7. The Client shall be responsible for transferring an appropriate and sufficient budget for a campaign to the business account. Ingenious shall not be obliged to ensure or check sufficient funds in the account.

If the budget is used by a third party, e.g. an agency, any payments are deemed as payments by the Client.

## 6.2. Monitoring of the account balances

6.2.1. The Client shall grant to Ingenious a comprehensive right to read the respective business account at the Bank and ensure that also its partners will grant appropriate rights of inspection to Ingenious. The right shall in particular imply that Ingenious can at any time view the account balance and all account transactions of the Client and the partners as well as that Ingenious is able to check the factual account balance against the payment. Ingenious shall however not be entitled to dispose of any funds in the account.

## 6.3. Change of bank and services without the involvement of a bank

6.3.1. During the term of the contract, Ingenious may terminate the co-operation with the Bank designated in Section 6.1.2 for good cause and provide an API to another bank instead. In the case the Client shall conclude appropriate agreements with the new bank specified by Ingenious.

6.3.2. Where the parties have agreed to use Finance-as-a-Service without involving a bank, the service provided by Ingenious in connection with the use of Finance-as-a-Service shall be restricted to providing the accounting data determined by the Software to the Client. In that case, the Client shall itself do the accounting for the campaign.

## 7. Customer Services, Customer Support, Trainings, Managed Services

7.1. If the Parties agree on further Services, Ingenious provides consulting and operational services for the use of the Software. The Service Levels are contained in the order form. Ingenious shall be responsible for the performance of the consultancy services and not for ensuring success.

7.2. The duration of the Customer Support (Standard Support and Premium Support) is linked to the duration and notices periods of the main agreement as defined under Section 11 hereof.

7.3. Unless otherwise agreed individually in writing, the minimum duration of other services is 6 months. The duration will be automatically extended by 6 months, unless the services are terminated at the end of the term by giving 3 months' notice. Section 11 shall remain unaffected with respect to the contract period.

## 8. Obligations in the case of other service provision contracts

8.1. Where other service provision contracts (in particular individual adjustments of the Software, training courses, support services) are agreed, Ingenious shall owe work in the period and to the extent agreed. The details of the services to be provided by Ingenious result from the respective order and, if concluded, a separate agreement. Ingenious shall owe the provision of the services agreed but not the bringing about of a certain outcome.

8.2. Ingenious shall be entitled to use subcontractors to provide services and to exchange

both subcontractors and individuals used to provide the service agreed without the express consent of the Client, provided this is acceptable to the Client. Ingenious cannot derive any rights from any delay which may be caused by such an exchange.

- 8.3.** When selecting the persons used to perform the service provision contract, Ingenious shall take reasonable account of the Client's interests. Ingenious shall be entitled to commission and involve other external services providers to support the performance of a service.

## **9. Remuneration and payment terms**

- 9.1.** All prices agreed shall be net prices to which the applicable statutory value-added tax shall be added.
- 9.2.** Unless expressly agreed otherwise in writing, payments must be made in advance for a period of three months.
- 9.3.** The Set-Up-Fee is due on the conclusion of the contract. The Set-Up-Fee covers the expenses for a limited amount of consulting volume and the set-up within the first four weeks (set-up period). If consulting exceeds the consulting volume during the set-up period, any further consulting will be charged according to the prices stated in the valid price list.
- 9.4.** The customer-support-fees are due in advance once a year.
- 9.5.** The Technology Fee is calculated based on the KPIs set by the Client and provisions in the Software. If the Client enters a provision of 0 Euro, Ingenious may fix the technology fee according to the particular circumstances at its own discretion.
- 9.6.** Invoicing is made at the beginning of the settlement period. The Technology Fee is estimated based on the Tracking and can be continuously adjusted; differing amounts will be offset. The first invoice amount is estimated at Ingenious' own discretion.
- 9.7.** Remuneration for additional services (e.g. further services according to section 8 hereof) are invoiced monthly according to work performed.
- 9.8.** In the event of default of payment, Ingenious shall be entitled to block the access to the Client's account and/or stop the tracking and/or cease to carry out other services or cease the performance of ongoing orders and campaigns until the outstanding amount is settled.
- 9.9.** Any assignment of claims against Ingenious shall require the express written consent of Ingenious.

## **10. Warranty and liability**

- 10.1.** The warranty provisions of Section 535 et seq. of the German Civil Code shall apply with regard to the granting of the possibility to use the Software. The claim for damages regardless of fault in accordance with Section 536a paragraph 1 option 1 of the German Civil Code shall be ruled out.
- 10.2.** The Client shall be obliged to examine the contractual Software and its operability as

soon as it is given the possibility to use it and to give written notice of any defect together with a precise description of the fault. Should the Client fail to give notice, the Software shall be deemed to have been approved, unless the defect was impossible to detect during the examination. The same shall apply by analogy to defects that occur at a later time.

- 10.3.** A prerequisite to default of defect remedy shall be the fixing of a reasonable time limit for fault correction by the Client. If the time limit expires, the Client shall be entitled to set Ingenious another reasonable preclusive time limit for fault correction. Should Ingenious fail to remedy the defect within that time limit, the Client shall be entitled to reasonably reduce the agreed remuneration. All time limits shall be fixed in writing.
- 10.4.** Apart from that, the provisions of the law regarding contracts of service in accordance with Section 611 et seq. of the German Civil Code shall apply, with the Client's claims against Ingenious based on defective performance or defects in the provision of the services becoming statute-barred six months after the day on which they have arisen and the Client gains knowledge of the circumstances giving rise to the claim or fails to gain such knowledge due to gross negligence or wilful intent.
- 10.5.** Ingenious and/or its vicarious agents and/or legal representatives shall be liable only for gross negligence or wilful intent. Contractual and non-contractual liability for any damage to property, financial loss, lost profit and consequential damage caused by a defect suffered by the Client shall be ruled out in the case of slight negligence, unless where liability for breach of a material contractual obligation (*Kardinalpflicht*) is concerned. A material contractual obligation is an obligation the discharge of which makes proper performance of the contract possible in the first place and discharge of which the Client may regularly rely on. In any case of a slightly negligent breach of a material contractual obligation, liability shall be limited as regards its amount to the foreseeable damage typical for the contract.
- 10.6.** Apart from that, liability shall be ruled out, with the exclusion of liability not applying in any case of injury to life, body or health of a person and not to liability under the product liability act.
- 10.7.** As a service provider, Ingenious cannot be held liable for any damage caused due to technical malfunction or impairment of the performance of providers or other third parties. Ingenious shall likewise not be liable for any damage which the Client might have prevented by taking reasonable measures, in particular by making backups of programs and data on a regular basis, at least daily.

## **11. Term and termination of the contract**

- 11.1.** The contract shall come into force upon signing. The contract is concluded for an indefinite period and can be terminated at the end of a month by giving 12 months' notice, unless otherwise agreed individually in writing.
- 11.2.** Ordinary notice of termination before the expiry of an agreed minimum term of contract shall be ruled out. Unless otherwise agreed, a minimum term of contract of

24 months shall apply. The right to terminate the contract without notice for an important reason shall not be affected.

- 11.3.** An important reason for termination by Ingenious shall be in particular if
- the Client, despite a warning, fails to discharge its obligation to pay the remuneration;
  - the Client falls behind with the payment of the monthly remuneration by an amount equal to the remuneration for two months;
  - a claim is asserted against Ingenious by a third party due to an alleged infringement of a right in connection with its activities for the Client; or
  - the Client seriously breaches its contractual duty to cooperate or, in the case of a less serious breach of contract, fails to stop the behaviour complained about despite appropriate notice
  - the Client in contradiction with section 4.9.1 and/or 12 does not comply with data protection standards or – regardless of compliance with data protection standards – data protection or data security problems become publicly known, especially if customer data is exposed to unauthorized access.
- 11.4.** An important reason entitling the Client to terminate the contract because of defects of the Software shall exist only in the case of a substantial defect and only if the Client proceeds as set forth at 10.2 and 10.3 hereof and if Ingenious fails to remedy the defect or grant access to acceptable alternatives within the reasonable preclusive time limit. A defect of the Software shall be regarded as substantial only if an essential component of the Software does not, or basically not, function.
- 11.5.** Any notice of termination shall be valid only if made in written form (Section 126 of the German Civil Code). A notice of termination via E-Mail is excluded.

## **12. Confidentiality and data privacy**

- 12.1.** The parties hereto undertake to treat as confidential any and all company and business information and knowledge of the other party obtained in connection with the performance of this contract and to not disclose such information or knowledge to any third party without the prior consent of the other party and to impose an appropriate obligation on its employees and vicarious agents. This shall not apply where such information or knowledge is public or already known to the receiving party at the time of disclosure. This obligation shall continue to exist after termination of the contractual relationship.
- 12.2.** All documents handed over to Ingenious by the Client are confidential. Ingenious shall keep them carefully and return them to the Client at its request. Ingenious shall not have a right to retain these documents. Ingenious shall be entitled to make copies for the purpose of preserving findings and evidence.
- 12.3.** Any non-disclosure agreements provided by the Client prior to the conclusion of the contract and concluded between the parties become null and void with the conclusion of this contract and are replaced by this contract.

- 12.4.** Where Ingenious needs to process personal data to provide the services, it shall comply with the provisions of the data privacy acts. Stored data shall be kept by Ingenious for a period of at least 6 months, also beyond the term of the contract.
- 12.5.** In the context of the cooperation, it cannot be ruled out that Ingenious may obtain personal data of the Client's customers or prospective customers. Ingenious attaches the greatest importance to the confidentiality and protection of data. Ingenious observes the principle of data economy and shall delete personal data of the Client's customers or prospective customers which it obtains at the latest four weeks after payment of the remuneration agreed for the underlying marketing campaign. Ingenious shall protect data in compliance with current standards and technological advance and using encryption methods required by the sensitivity of the data.
- 12.6.** Ingenious shall be entitled to process collected data in anonymised form. The anonymised data does not allow any inferences to be drawn about the cooperation partner or its customers.

### **13. Final provisions**

- 13.1.** The law of the Federal Republic of Germany, excluding application of the UN Convention on Contracts for the International Sale of Goods, shall exclusively govern any dispute between the parties hereto. The place of fulfilment and jurisdiction for any dispute arising from or in connection with this contract, irrespective of the legal basis, shall be Berlin.
- 13.2.** Any supplement or amendment to these GTC or the underlying contract shall only be valid if made in writing (Section 126b of the German Civil Code). This shall likewise apply to any alteration of this provision.
- 13.3.** Ingenious shall be entitled to alter the contractual terms and conditions by giving 28 days' prior notice. If the GTC are altered, the Client shall have a special right of cancellation which shall have to be exercised within one week of receipt of the notice.
- 13.4.** The Client shall be entitled to set off any liabilities under this contract only against such receivables from Ingenious the existence of which has been legally decided or which Ingenious has expressly recognised by a written declaration.
- 13.5.** Ingenious shall be entitled to assign this contract with all rights and obligations stipulated in it to a subsidiary or sister company. Such assignment shall become effective 28 days after notification of the Client.
- 13.6.** Should any individual provision of this contract be or become invalid, this shall not affect the validity of the remaining provisions.