

GENERAL TERMS AND CONDITIONS

as of December 2013

of
Ingenious Technologies AG
(hereinafter referred to as "Ingenious")
Rosenheimer Str. 145h
81671 München

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") regarding services in the context of the use of the following Ingenious Technologies software: Ingenious *.net*, Ingenious *.track*, Ingenious *.pay* (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.
- 2.2. An essential part shall be the provision of the Ingenious Technologies Software agreed in each case as follows: Ingenious *.net* subject to the provisions of section 5 hereof, Ingenious *.track* subject to the provisions of section 6 hereof and Ingenious *.pay* subject to the provisions of section 7 hereof, as partial services which can be booked separately. Contracts for Ingenious *.BIZ* shall comprise delivery of all partial services subject to the provisions of the sections specified above.
- 2.3. By sending a written order, the Client applies for the conclusion of a contract. The subject matter of the application is an offer by Ingenious that includes these GTC. An order is accepted by Ingenious following its receipt and review by sending an appropriate notice to the Client or by Ingenious starting to provide the service.

3. General rights and obligations of Ingenious

- 3.1. Ingenious shall provide the services agreed in the respective offer and take the Client's rights, legally protected goods and interests into account 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' written notice (Section 126b of the German Civil Code) to the Client of essential changes that change the Software's functionality altogether.
- 3.5. If any change is 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. Non-advised non-availability times 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 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 placed an order with 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 partnership management).
- 4.1.2. The Client is aware that the results determined by the Software are based on a fully automatic process taking account of 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 assures that all information given by him related to this contract is accurate and true. This applies particularly in the context of the calculation of the accounting based on success with its customer or partner (e.g. defining the parameter in compliance with section 4.1). The Client will not conclude any agreement with its customer or partner that might disadvantage Ingenious and its interests against the principle of utmost good faith with regards to customary practice.
- 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.

4.3. Access and access data

- 4.3.1. The Client assures that solely authorized and qualified staff referring to section 4.7. gain access to the software.
- 4.3.2. Ingenious shall inform the Client of the individual access data in due time after conclusion of the contract.
- 4.3.3. The Client shall store its access data carefully and protect it against 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. **Source code and use of the Software**

4.5.1. 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. **Indemnification**

4.6.1. 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 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.

4.7. **Training**

4.7.1. The Client shall ensure that all people authorized to use the Software (esp. staff, service provider or customers) will participate in the technical training offered by Ingenious.

4.7.2. If the Client acts for a third party (e.g. as an agency) he also agrees to participate in the sales training offered by Ingenious.

4.7.3. The costs of the respective training comply with the current price list.

5. Ingenious .net (partnership management)

The following shall apply in addition where the parties hereto agree the use of Ingenious .net:

5.1. **Use of the Software by the Client**

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

5.2. **Relationship with the Client's partners**

5.2.1. It is the sole responsibility of the Client to select the partners of its private program or private network and to initiate, contractually design and carry out a campaign with the respective contractual partner. Ingenious shall not itself become a contractual partner of the Client's respective partner.

5.2.2. The Client shall manage 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 confirm or reject KPIs. If the Client does not confirm the KPIs within 60 days the confirmation shall be fictitious.

5.3. **Tracking**

5.3.1. An element of the Software is the option to track KPIs defined by the Client. The tracking system provided by Ingenious in the context of Ingenious .net is used for this.

5.3.2. The Client undertakes to give its comprehensive cooperation for 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.

5.3.3. If the tracking is not possible for a reason that the Client or one of its partners is responsible for, especially because the tracking code has not been integrated correctly or because the Clients' webserver has not been available for more than 12 hours (e.g. because of an expired SSL-certificate, changes of the DNS-setting or any other shop-, website- or advertising media breakdown caused by the Client) Ingenious' claim for remuneration relating to Section 9 shall remain unaffected. The amount of the remuneration for the period of a tracking breakdown will be calculated on the basis of the average over the previous 3 months.

5.3.4. Furthermore the Client shall not do anything which may impair the tracking. The parties hereto shall inform each other if it becomes apparent that the tracking is impaired for whatever reason.

6. Ingenious .track (multichannel tracking)

The following shall apply in addition where the parties hereto agree the use of Ingenious .track:

- 6.1. Ingenious .track enables the Client to track the results of the online marketing measures agreed with its partners (multichannel tracking). The details result from the offer.
- 6.2. Ingenious shall acquire the necessary data and provide it in the evaluation tool. The Client itself shall be responsible for setting the parameters in Ingenious .track prior to this.
- 6.3. The Client undertakes to give its comprehensive cooperation for the multichannel 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.
- 6.4. If the tracking is not possible for a reason that the Client or one of its partners is responsible for, especially because the tracking code has not been integrated correctly or because the Clients' webserver has not been available for more than 12 hours (e.g. because of a expired SSL-certificate, changes of the DNS-setting or any other shop-, website- or advertising media breakdown caused by the Client) Ingenious' claim for remuneration relating to Section 9 shall remain unaffected. The amount of the remuneration for the period of a tracking breakdown will be calculated on the basis of the average over the previous 3 months.
- 6.5. Furthermore the Client shall not do anything which may impair the multichannel tracking and, where necessary, oblige partners in this respect.
- 6.6. The parties hereto shall inform each other if it becomes apparent that the multichannel tracking is impaired for whatever reason.

7. Ingenious .pay (Payment & Accounting)

The following shall apply in addition where the parties hereto agree the use of Ingenious .pay:

7.1. Essential content of the service and prerequisites to use

- 7.1.1. 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.
- 7.1.2. 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 in the context of 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 defined by it.
- 7.1.3. Ingenious will assign and convey a project-, transaction- or identification number to the Client, which he shall always refer to in relation to any payment to the bank by indicating the number as the reason for transfer.
- 7.1.4. A prerequisite to using Ingenious .pay is the conclusion of a deposit summary account agreement for payment services related to the service of Ingenious .pay (hereinafter referred to as: account agreement) with the bank at the banks terms and conditions, whereby the Client will become an account co-owner of the deposit summary account. If and insofar as the account agreement no longer exists, all the performance obligations of Ingenious in relation with the use of Ingenious .pay shall cease to exist. The payment itself is handled by the bank on behalf of the Client.
- 7.1.5. The Client undertakes to provide to Ingenious all information relating to money laundering legislation in due time, completely and correctly in terms of content which is required to carry out identity and eligibility checks of the Client or partners who make payments. For this purpose Ingenious is entitled to collect the following personal data from the Client as well as storage and transfer the data to the bank on behalf of the Client:

- company name
- legal form
- company registration number (if existing)
- address of place of business or main office (street, street number, ZIP-code, city, country)
- telephone number
- fax number
- E-Mail-address
- names of the members of the representative body or legal representatives (first and last name)
- beneficial owner
- reference account details (bank, account number, bank code); this reference account is used as the account to which the bank can pay out any retransferred money from the deposit summary account less potential fees, provided that no other payment account has been specified
- copy of excerpt of the commercial register

7.1.6. Ingenious shall not be obliged to check the results determined by the Software.

7.2. **Payment handling**

7.2.1. The handling of payments by the bank is not the subject matter of this contract.

7.2.2. By using Ingenious .pay and confirming KPIs, the Client may if applicable give payment instructions directly to the bank. The information is forwarded automatically via the API when the Software is used and in the process Ingenious shall neither act as a representative nor as a messenger but solely as a technical service provider.

7.2.3. The Client shall be responsible for transferring an appropriate and sufficient budget for a campaign to the bank's deposit summary account. Ingenious shall not be obliged to ensure or check sufficient funds in the account.

7.2.4. If a third party (e.g. a client of an agency) deposits the budget, in case of any doubt the payment is deemed to be performed by the Client. This shall not apply if the third party himself is co-owner of the deposit summary account at the bank.

7.2.5. To be able to make full use of Ingenious .pay, it is necessary that the partners to which commissions are to be paid agree with the procedure of disbursement involving the bank as regulated within this terms and conditions. It is the Client's responsibility to arrange for an appropriate agreement with the partners. This shall also apply if the Client has no direct contractual relationship to the partners (e.g. because the partners are commissioned by the customers of the Client).

7.2.6. The Client shall advise Ingenious of reference accounts of the partners to which the bank can pay out money if necessary. This reference account will be verified by a so called "1-Cent-transfer" by Ingenious. Partners can only take part in Ingenious. pay, if this verification is successful.

7.3. **Monitoring of the account balances**

7.3.1. Ingenious shall check the account turnover and monitor the proper balance of the accounts using the data provided by the bank by making a comparison with the results determined automatically by the Software but at no time shall Ingenious have any right to dispose of the amounts transferred to the respective deposit summary account.

7.3.2. The Client shall grant to Ingenious a comprehensive right to read the respective deposit summary account at the bank and ensure that also its customers (and as the case may be their partners) will grant appropriate rights of inspection to Ingenious if necessary. 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.

7.3.3. Should Ingenious find faulty account transactions, the bank and the Client shall be informed along with the transaction file being send. A fault shall be in particular if the account transactions do not correspond to the payment data determined by the Software.

7.4. **Accounting**

7.4.1. 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 of time.

INGENIOUS TECHNOLOGIES AG	Standort Berlin	Vorstand	Aufsichtsrat	Amtsgericht München
Rosenheimer Str. 145 h	Hausvogteiplatz 11 A	Christian Kleinsorge	Werner Penk	HRB 168208
81671 München	10117 Berlin	(Vorstandsvorsitz)	Martin Kölsch	St.-Nr. 143/107/00496
		Eugen Becker	Lukas Bennemann	USt-IdNr. DE814087813

- 7.4.2. The transactions recorded shall be compiled in electronic documents which can be used directly as accounting vouchers depending on the accounting system used by the Client or partner.
- 7.4.3. A prerequisite to the creation of proper vouchers by Ingenious is that the data of all participating partners is updated by the Client in due time and correctly.

7.5. **Change of bank and services without the involvement of a bank**

- 7.5.1. During the term of the contract, Ingenious shall be entitled to use another bank to discharge the obligations under this contract. In that case, the Client shall conclude appropriate agreements with the new bank specified by Ingenious.
- 7.5.2. Where the parties hereto have agreed to use Ingenious. without involving the bank, the service provided by Ingenious in connection with the use of Ingenious .pay shall be restricted to providing the account data determined by the Software to the Client. In that case, the Client shall itself do the accounting for the campaign.

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, the remuneration, with the exception of the transaction fee, shall respectively be prepaid (prepayment). The amount of the transaction fee will be calculated upon the occurrence of KPIs, as respectively defined by the Client within the software.
- 9.3. If services referring to Section 7 of this terms and conditions (Ingenious. pay) are stipulated, the Client agrees that due fees relating to this services are transferred from the budget paid into the deposit summary account to Ingenious by the bank.
- 9.4. Invoices shall be issued at the beginning of the accounting period (production and customer support fee) or respectively one a month for the current month (transaction fee) at which the amount is calculated upon expansions based on the tracking; divergent amounts will be considered within following invoices.
- 9.5. The Client shall be obliged to bear travel expenses incurred by Ingenious in the context of this contract after invoicing by Ingenious.
- 9.6. In the event of default of payment, Ingenious shall be entitled to charge interest to the Client at a rate of 8 percentage points on top of the base rate. In the event of default of payment, Ingenious shall be entitled to stop carrying out current orders and campaigns until all amounts due have been paid in full.
- 9.7. 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 cardinal contractual obligation (Kardinalpflicht) is concerned. Cardinal obligations are obligations without the fulfilment of which, due performance of the contract would not be possible and upon the fulfilment of which, the contracting partner usually relies and can rely. In any case of a slightly negligent breach of a cardinal 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 6 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 12 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.
- 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 writing (Section 126b of the German Civil Code).

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. Where Ingenious needs to process personal data to provide the services, it shall comply with the provisions of the data privacy acts.
- 12.4. 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. Ingenious shall be entitled to process data in anonymised form to statistically evaluate marketing measures and in this way contribute to the improvement of campaigns. 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 Munich.
- 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.