

General Terms and Conditions of Business (AGB) of Kraemer Marktforschung GmbH

I. Scope of Validity

1. The General Terms and Conditions of Business (hereinafter called “the AGB”) that follow solely apply to all current and future contracts between Kraemer Marktforschung GmbH (hereinafter called “the institute”) and any contracting party (hereinafter called “the client”). The client’s AGB deviant from same does not apply.

2. These AGB only apply to legal transactions with persons acting in furtherance of their commercial or independent professional activities (commercial enterprises within the meaning of § 14 BGB [German Civil Code]). That includes legal persons in public law and special funds under public law.

II. Offer, Making of Contract and Scope of Performance/Cancellations

1. Contracts offered by the institute are not binding. They are merely meant to assist the client in making a decision on awarding the project concerned and may only be publicised or passed on to third parties with the institutes' agreement. The target dates and deadlines given are only binding if expressly so agreed.

2. The institute decides the incentive amount that will be paid to the respondent. This amount can fall below or exceed the amount that has been agreed with the client. A reimbursement of overpaid amounts will not occur.

3. Contracts are first made when the client receives our written confirmation of the relevant order/s or when the institute commences rendering contract performance at the latest.

4. The institute’s offer, order confirmation and these AGBs govern the contract provisions. Amendments, supplements and ancillary provisions must be agreed in writing to be valid.

5. The institute will agree the measures to be taken with the client and submit, if we consider it necessary, a proposed project procedure with appendices and a draft of the envisaged timetable for the latter’s information and consideration.

6. All project and/or study cancellations must be made in writing. A cancellation prior to the study and during the set-up phase will result in a penalty of 30% of the total study costs. A penalty of 100% of the total study costs is applicable for cancellations made at a later date.

III. Client's Obligation to Cooperate

1. The client is solely responsible for checking the aforementioned proposal, appendices and other material per II 4 above for suitability for the envisaged purpose/s and has a duty to do so.

2. Any and all desired amendments and/or supplements to the aforementioned project proposal must be advised the institute promptly but before commencement of any market survey or poll envisaged therein at the latest and all the information and documents needed handed over to the institute in good time to properly perform the contract/s involved. The client is wholly and solely responsible for all the additional costs incurred by the institute due to any breach of the aforementioned obligations.

3. The client promises that the proposed measures and the publication and utilization of the result/s thereof are permissible in law, particularly competition law, and that the performance of the poll or survey concerned and the utilization and publication of the results thereof do not breach any third party rights whatsoever. The client herewith indemnifies the institute against any and all claims asserted against them due to the client deliberately or negligently making illegal use of the legally obtained result/s thereof (e.g. illegal and/or improper advertising using same).

IV. Prices and Terms and Conditions of Payment

1. The prices for the institute's project proposal/s are those given in their order confirmation plus VAT. Additional goods and/or services requested by the client will be invoiced separately applying the institute's usual prices and daily rates.

2. Payments to final invoices shall be made within 28 days after date of invoice without deduction to one of the institute's appointed bank accounts. Incentives will be charged in advance in a separate invoice; payments to incentive invoices shall be made within 7 days after date of invoice. A payment shall be deemed to be paid once the institute or its factoring partner has definite control over these funds. The institute is entitled to interest in the event of arrears of payment of eight percent above the basic rate.

3. Additional costs incurred in performing a contract for which the institute cannot be held liable and that they could not reasonably have been expected to foresee when making contract may be invoiced separately by them if that is objectively justified and the extra costs are clearly discernible in the invoicing for the client and adequately detailed. The same applies mutatis mutandis if the client cannot be held liable for the additional cost.

4. The client may only apply setoff if the accounts receivable in question are undisputed or res judicata. The same applies mutatis mutandis to the assertion of any right of retention.

5. If the institute's accounts receivable from the client are endangered by the client's worsening financial situation then the former are entitled to demand all accounts receivable from the client under the terms and conditions of all business relations between them be paid immediately provided the institute has rendered the contractual goods and services involved. This also applies mutatis mutandis if the institute has accepted cheques and/or bills of exchange for same. Such endangerment as aforementioned exists if any bank or credit agency provides information leading to the belief that the client is not creditworthy. The same applies should the client be in arrears of payment for at least two invoices. In such a case the institute is entitled to set the client an appropriate period of grace during which they may either settle the arrears or proffer security step by step against the rendering of the goods and/or services still outstanding at their discretion. The institute may withdraw from the contract should the said period of grace expire fruitlessly. Setting a period of grace can be waived in the event of the client becoming insolvent or ceasing all payment.

V. Storage of Documents

The institute has a duty to store the survey/poll documents for one year after final delivery of the results of same to the client. Data carriers must be stored for two years thereafter.

VI. Confidentiality and Data Protection

1. The institute undertakes to maintain strict confidentiality on all information and business secrets concerning the client of which they may become aware in the course of their mutual business relations with the care and attention expected of a prudent business person. This obligation applies even if an intended contract is not made and remains in effect after the expiry of contractual relations with the client.

2. The client knows that personal data are stored and processed by the institute in association with the negotiating and making of contracts. The client waives their right to information under the provisions of the BDSG (German Federal Data Protection Law).

VII. Competition

The institute may act on behalf of the client's competitors during and after making contract with the client unless specifically agreed otherwise.

VIII. Exclusivity

The institute grants no exclusivity in specific product fields and/or survey/poll subject matters and/or survey/poll methods unless otherwise specifically agreed in writing.

IX. Client Rights in the Event of Defects

1. The institute accepts unlimited liability under German product liability law for deliberate damage, malicious concealment of defects, damage due to grossly negligent breach of any major contractual obligation and for damage to life or limb. The institute accepts guarantee liability to the same extent.

2. The institute's liability for damage due to gross negligence to which paragraph 1 does not apply is restricted to remedying foreseeable damage typical of such contracts. The institute's liability for breach of any major contractual obligation due to simple negligence is confined to recompensing/remedying foreseeable damage typical in such contracts. Liability is limited to order value per damage event.

3. Other than in the cases given in paragraphs 1 and 2 the institute cannot accept liability for damage due to simple negligence.

4. The client may only require the institute to recover data if the institute deliberately or grossly negligently caused the deletion/destruction of same and the client has ensured said data can be recovered at reasonable cost from data material in mechanically legible form.

5. The aforementioned restrictions and exclusions of liability also apply to all the institute's internal constituent bodies and personnel, vicarious agents and assistants.

6. The client is not entitled to withdraw from the contract if a breach of contractual obligation occurs for which the institute cannot be held liable and that does not constitute any defect in the goods and/or services rendered by them.

7. The institute cannot accept any liability whatsoever for the veracity and/or completeness of data from third parties.

X. Reservation of Title

Title in the survey/poll data handed over to a client first passes to the latter when and if all accounts receivable by the institute and/or any third party/parties commissioned in the name of the client have been settled in full.

XI. Applicable Legal Convention, Places of Performance and of Jurisdiction

1. The contract is made solely in German law. The UN Convention on the International Sale of Goods (CISG) does not apply.

2. Place of performance of contractual goods and/or services is our head office location in Munster, Germany. Our head office location is also the place of payment for our clients.

3. Sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Munster, Germany. However, we have the right to take the client to court at their forum domicili. This also applies to cross-border transactions.

As of August 2017