

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

Optimerch GmbH, Ostenhellweg 50, 44135 Dortmund, Germany

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### **1. Subject matter and scope of application**

The following General Terms and Conditions (GTC) apply to all contractual agreements between Optimerch GmbH, Hansastr. 30, 44137 Dortmund, Germany, hereinafter referred to as Optimerch, and its customers, as long as these are "entrepreneurs" within the meaning of § 14 BGB (German Civil Code). Any GTC of the respective customer are expressly contradicted. The following GTC do not apply to "consumers" within the meaning of § 13 BGB.

### **2. Conclusion of the contract**

Contracts between the client and Optimerch are concluded by way of express acceptance of the client's offer by Optimerch, even if this offer is made on a form previously submitted by Optimerch. The start of the work of the contract by Optimerch, e.g. by sending the access data for the password-protected customer area or the sending of invoices, is equivalent to express acceptance.

### **3. Ancillary agreements**

Verbal ancillary agreements must be in writing to be effective. Any deviations from the contract form shall only be deemed agreed if they are expressly confirmed by the other party, otherwise the pre-printed draft contract shall apply. The burden of proof for the validity of the individual agreement subsequently included in the form shall be borne by the party invoking the agreement.

### **4. Range of services**

Optimerch offers numerous services in the field of online marketing. All contracts are to be judged according to the service contract law of the German Civil Code, unless the client can prove that the clear focus of the concluded contract was on work

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performance that could be accepted. In the case of contracts that have search engine optimisation as their content, Optimerch owes an effort to improve the internet presence within the framework of the specified settings. The client is aware that the results of search engine providers are subject to constant dynamic change and that entries may even be entirely removed. Optimerch has no direct influence on this. If a backlink build-up has been contractually agreed, it is the sole responsibility of Optimerch to determine the type, duration, quality and frequency at its own discretion, unless other agreements have been made in this respect in the contract form.

## **5. Reference**

By accepting the contract by Optimerch, the client irrevocably declares that Optimerch may refer to the client as a reference client free of charge and may also include the client's logo (possibly in a different colour) on the Optimerch website and link to the website for this purpose. This permission shall continue to apply after termination of the contract. After expiry of the contract, Optimerch will remove this reference within a maximum period of one month if the client expressly expresses this wish in writing.

## **6. Optimerch Control Center**

The central area for the documentation of provision of service is the password-protected Control Center, which is generally available 24 hours a day and at least 95% of the time on a monthly average. All reports are stored in the Control Center, as long as they are the subject of the contract. There is no separate reporting obligation beyond this. The customer will carry out the settings viewable in the Control Center by himself. Optimerch is not obliged to accept and/or execute instructions and orders in any other way. Optimerch may block access to the Control Center for the duration of the default in payment.

## **7. Prices and remuneration**

All prices are net plus statutory VAT and due in advance immediately after the conclusion of the contract (in the case of monthly fees, at the beginning of the respective period) without deduction.

## **8. Terms of payment and billing**

Invoices from Optimerch shall be sent to the client by e-mail at Optimerch's discretion. The invoice is deemed to have been received within one working day, unless the client can prove that he did not receive the invoice by e-mail. Any objections to invoices must be made in writing to Optimerch within two weeks of delivery or deposit of the invoice. After the expiry of this period, the invoice is deemed to have been approved by the client. Unless otherwise expressly agreed, invoices shall be settled by SEPA direct debit. The client must provide Optimerch with the complete account details for this purpose. In the case of direct debit by SEPA direct debit, the announcement of the direct debit collection ("pre-notification") shall be made with a notice period of at least one working day. The client must reimburse Optimerch for any additional costs resulting from a debt collection that was announced in advance but failed if he is responsible for the failure. Optimerch reserves the right to reject individual means of payment and/or make them dependent on the payment of a separate processing fee.

## **9. Delay in payment**

The customer is automatically in delayed payment without the need for a reminder if the invoice is not paid within one week from the date of issue. In the case of a delay in payment, Optimerch reserves the right to hold back its own contractual performance until the delay has ended (right of retention). If, in the case of a continuing obligation, the client is in a delay with an amount corresponding to two or more monthly fees, or if the client announces a general refusal to pay, Optimerch may immediately call due the entire monthly fees still due during the current minimum contract period and withhold services owed as long as the due claims have not been paid. Any claims for damages by Optimerch remain unaffected. In the case of delays of two or more monthly fees, the announcement of a general refusal to pay, non-fulfilment of the client's obligations to cooperate, or an unjustified objection to direct debits, Optimerch is entitled (but not obliged) to terminate the client without notice and claim damages. The amount of the claim for damages for loss of profit shall be set at a flat rate of 75% of the total monthly fees still due during the current minimum contract term, provided that this has not already been made due to the client beforehand. The customer is at liberty to prove that a lesser or no loss at all has been incurred. Any rights of retention of the customer are only permissible with undisputed or legally established claims that are based on the same contractual relationship. If the customer is exceptionally granted an instalment payment option

that deviates from the contract at his request after the conclusion of the contract, this shall automatically lapse if the customer is more than one week in delay with an instalment. In this case, the entire deferred amount shall become due at once. The damage items originally incurred as a result of the delay (default interest, reminder fees, lawyer's fees) shall remain unaffected in the case of an instalment payment agreement, unless expressly agreed otherwise. The statutory provisions also apply to a delay in payment.

## **10. Assignment and set-off**

Any assignment of claims arising from this contract by the client to third parties requires the prior written consent of Optimerch. The same applies to a transfer of the contractual relationship from one client to another. Consent may be made dependent on the provision of collateral (e.g. assumption of debt or guarantee). The offsetting of the payment claim against counterclaims of the client is only permitted if these are recognised by Optimerch as existing and due or are legally established.

## **11. Contract term and termination**

The service contracts agreed with Optimerch are in principle concluded for an indefinite period and have an agreed minimum contract term as well as a period of notice. The minimum contract term is generally 12 months, unless a different arrangement has been expressly agreed in the contract form. The contract may be terminated by either party without giving reasons by giving one-month notice at the end of the respective contract term, unless a different arrangement has been expressly agreed in the contract form. The contract may be terminated by either party without notice for good cause if the terminating party, taking into account all circumstances of the individual case and weighing the interests of both parties, cannot reasonably be expected to continue the contractual relationship until the agreed termination or until the expiry of a notice period. If the good cause comprises the breach of an obligation under the contract, termination shall in any case only be permissible after the unsuccessful expiry of a period set for remedial action or after an unsuccessful warning, even if such warning appears to be unnecessary. The entitled party may only terminate the contract within a period of two weeks after becoming aware of the reason for termination. The termination without notice must state the reason for termination in an understandable way, otherwise the termination without notice is invalid. The termination without notice cannot be subsequently based on other reasons for termination. If the contract is not terminated in due time,

the contract shall be automatically extended by 12 months or, if a longer minimum contract period has been agreed, by the period of this extended minimum contract period. The termination must be given in writing by registered mail. The electronic form (§ 126a BGB) is excluded. If a mutually agreed change is made to the original contract conditions (e.g. in the form of an upgrade) during the term of the contract, the minimum contract term agreed in this change contract begins automatically for the original and the changed contract content from the time of the change. If no minimum contract term has been agreed in the amendment contract, the originally agreed minimum contract term shall apply, which begins anew at the time of the change, uniformly for the change as well as the original content of the contract. In the case of a price increase, the customer shall have a special right of termination with a notice period of one month to the end of the month preceding the effectiveness of the price increase.

## **12. Partial services**

Optimerch is entitled to provide partial services, as long as this is reasonable for the client.

## **13. Fulfilment**

It is at Optimerch's discretion to call in third parties to perform the contractual services or entrust them with the performance of individual or all contractual obligations. In the case of continuing obligations, Optimerch shall in principle provide the contractually agreed services at least once during the respective contract period, unless otherwise agreed in the contract form. Optimerch shall determine the respective time at its own discretion. This time is independent of the monthly contribution due by the client. One-off services at the beginning of the project (e.g. the coordination of keywords or initial analyses) shall not be repeated in the event of a contract extension. The contracting parties agree that the creation or removal, or non-removal, of a backlink linking to a website of the client shall be at Optimerch's discretion. Any agreed backlink creation will always be spread over the agreed contract term. A permanent availability of the backlinks is expressly not guaranteed. Optimerch is also at liberty, during the term of the contract and after termination of the contract, to leave the switched backlinks in place, delete them successively or all at once. Accordingly, the deletion phase may begin before the end of the contract

term and/or continue beyond the end of the contract term. The customer has no claim to the deletion of individual or all backlinks.

#### **14. Freedom from performance**

In the event of force majeure, labour disputes, natural disasters and transport blockades, as well as other circumstances beyond Optimerch's control that influence performance, Optimerch shall be released from its obligation to perform for the duration of the impediment. If the customer does not fulfil his obligations to cooperate, or does not do so in time or properly, and if Optimerch is therefore unable to fulfil the services affected by this, Optimerch is released from the obligation to cooperate for the duration of the lack of cooperation. If the client hires Optimerch as an agency to create membership accounts with other internet portals for the client, the direct legal consequences of this registration shall affect the client. In this respect, Optimerch can appear in both open and covert representation for the customer and conclude contracts.

#### **15. Liability**

Optimerch is liable in accordance with the statutory provisions for damage to life, limb or health resulting from a negligent or intentional breach of duty by Optimerch, its legal representatives or its vicarious agents, as well as damages covered by liability under the Product Liability Act. For other damages, Optimerch shall only be liable to itself, its legal representatives or its vicarious agents for intent and gross negligence. In the case of gross negligence, liability for damages is limited to the predictable, typically occurring damage. Claims for damages due to consequential harm caused by a defect are excluded, as long as they do not fall under no. 15 sentence 1. To the extent that Optimerch has given an express guarantee, Optimerch shall also be liable within the range of this guarantee. The client bears the burden of proof for the agreement of such a guarantee. In the event of a breach of a cardinal obligation, Optimerch shall also be liable for damage caused by slight negligence on the part of Optimerch, its legal representatives or vicarious agents. Cardinal obligations are those contractual obligations whose fulfilment is essential for the proper performance of the contract and on whose compliance the client regularly relies and may rely. Optimerch shall only be liable if the damages are typically associated with the contract and are predictable. Any further liability on the part of Optimerch is excluded (except for the claims mentioned in no. 15 sentence 1) regardless of the legal nature of the asserted claim. This also applies in particular to claims in tort or claims for

compensation for futile claims in lieu of performance. Optimerch is not liable for damages that arise solely or mainly due to the violation of a duty to cooperate or a requirement of the client. This does not apply if the damages fall under no. 15 sentence 1. As long as Optimerch's liability is excluded or limited, this also applies to the personal liability of its employees, workers, staff, representatives and vicarious agents. Optimerch is also not liable for loss of data and programs, as long as these have not been caused by at least gross negligence on the part of Optimerch and/or the client has not complied with his obligation to make regular backup copies. All claims for damages by the customer expire six months after they arise. The limitation period shall apply irrespective of the customer's knowledge of the circumstances giving rise to the claim. This does not apply in the case of intentional behaviour on the part of Optimerch or the employees, workers, representatives and vicarious agents of Optimerch. The burden of proof for any claims for damages and their preconditions lies with the client. Optimerch cannot accept any liability for the effects of a measure not agreed with Optimerch.

## **16. Obligations of the client to cooperate and release from liability**

In communications between the client and Optimerch, the contact persons acting on behalf of the client, in particular the persons named in the contract form, are deemed to be authorised to make and receive declarations on behalf of the client. The client is obliged to check all services provided by Optimerch as well as proposed or advised measures for their legal admissibility. This also applies to PR and other publications, as well as publications provided by Optimerch on behalf of the client. This applies in particular regarding copyright, youth protection, tele-data, press law and the right to one's own image. In this regard, the customer releases Optimerch from any claims based on the fact that the services listed comprise legal violations or are encumbered with the rights of third parties, and assumes the costs incurred as a result. The client is obliged to provide Optimerch with all necessary information for the provision of the contractual services and, without being asked, to point out relevant circumstances that are unknown to Optimerch. However, Optimerch is under no obligation to check the accuracy of the information provided by the client, e.g. regarding details of its existing IT system, intended hardware changes, extensions or other web and hardware-related aspects. As part of the obligation to cooperate, the customer must also grant Optimerch direct access to the websites, content management systems, shop systems, advertising accounts and/or merchandise management systems to be processed by Optimerch. If the client does not wish to provide this access data or does not provide the access data within a reasonable period of time, the client may also make the changes recommended by Optimerch



himself. A reduction in the fee to be paid by the client is not associated with this. The client undertakes to check all measures taken by Optimerch to determine the extent to which these affect the rights of third parties, whether in terms of copyright, competition law or criminal law. In the event of non-compliance with this obligation, the client will also indemnify Optimerch from all legal and court costs resulting from the breach of this obligation. Optimisation measures by Optimerch suppose that other optimisation measures are not carried out in parallel, as this regularly leads to undesirable results. The customer therefore undertakes to refrain from other optimisation measures.

### **17. Duty to give notice of defects**

The client must report allegedly defective services or services that have not been provided properly or in time in writing without delay, with detailed documentation and justification. If the customer fails to give notice of defects in due time, the service shall be deemed approved and in accordance with the contract. The customer shall completely back up programs, data and data carriers before correcting errors.

### **18. Copyright protection and rights of use**

The services provided by Optimerch such as texts, programming, publications, etc. are copyrighted works. Optimerch is the owner of the rights. All copyrighted simple rights of use associated with the services provided by Optimerch are only transferred to the customer to the extent that the range of the right of use in terms of space, time and content corresponds to the purpose and duration of the contract. Furthermore, the rights of use are only transferred to the customer when he has properly fulfilled all of his payment obligations towards Optimerch. The customer is obliged to refrain from use until the rights of use have been transferred. The customer is solely responsible for the content of his web presence (e.g. website, Facebook profile, portals, etc.). For software from third-party manufacturers, their terms of use apply. The licence agreement is concluded directly between the manufacturer and customer. If a transfer of the rights of use to the customer conflicts with third-party protection rights, Optimerch must inform the customer immediately after becoming aware of this. He then has to decide immediately on the further implementation of the contract. Third-party rights of use are acquired in the name and for the account of the client.



## **19. Storage obligations**

Unless a separate archiving agreement has been made with the client against payment, Optimerch is not obliged to keep and release the data created and stored by it within the scope of the contractual relationship after its termination.

## **20. Data protection**

Optimerch undertakes to maintain data secrecy within the meaning of the Data Protection Act. Optimerch is authorised to process personal data entrusted to it within the framework of the execution of an order itself or through third parties that it uses to fulfil services. The client agrees that data relating to him/her may be stored, amended and/or deleted and transmitted to third parties as necessary, in particular for the transmission of data necessary for the registration and/or modification of a domain in search engines, catalogues and lists, which may subsequently become public. Optimerch accepts no liability for breaches of data protection caused by forcible or illegal access by third parties.

## **21. Applicable law, place of jurisdiction and severability clause**

The present provisions shall be governed exclusively by German law. This applies to the exclusion of the UN Convention on Contracts for the International Sale of Goods. The exclusive place of jurisdiction for all disputes arising from the contract in relation to merchants, legal entities under public law or special funds under public law is Dortmund, Germany. The place of performance is Dortmund. Optimerch reserves the right to amend the GTC at any time without prior notice. The most current version of the GTC can be viewed at <https://www.optimerch.de/agb/>. The client into whose current contractual relationship the GTC have already been introduced will be informed by Optimerch of the amendment to the GTC, e.g. by e-mail. If the client does not object to the changes within one month, in such a case, the changed version of the GTC shall be deemed to have been acknowledged and approved by the customer. In the case of an objection by the customer, the original GTC shall continue to apply. Should a provision in these GTC or a provision within the scope of other agreements be invalid in whole or part, this shall not affect the validity of all other provisions or agreements. The parties are obliged to replace the ineffective provisions with effective provisions that come as close as possible to the meaning of the ineffective provisions.