

General Business Terms and Conditions

of

explido GmbH

1 Scope

1. The following General Business Terms and Conditions (T&C) shall apply exclusively to all services rendered by explido GmbH.
2. These shall also apply, if the contracting party makes an offer or places an order subject to their own terms of business that differ from or amend our T&C. Any deviating or additional terms of business of the contracting party to which explido GmbH & Co. KG did not expressly agree shall in no case become a part of the Contract, even if such terms have not been expressly rejected.
- 3 The T&C shall apply also, if explido GmbH performs the services without reservation, knowing that contradicting, additional or deviating terms exist on the part of the contracting party.
4. All agreements between explido GmbH and the contracting party made in relation to the performance of the Contract shall be made in writing.
5. The present T&C shall apply only vis-à-vis companies that are contracting partners of explido GmbH within the meaning of section 14 BGB (German Civil Code).

2 Making of the Contract

1. All offers shall be subject to change and shall be without commitment including offers made in the name of explido GmbH. Offers made by explido GmbH shall become part of the Contract only, if expressly agreed in the agency agreement. A binding Contract shall be deemed to be made only once confirmed by explido GmbH.
2. The receipt of the order is confirmed by the agency agreement.

3 Object of the Contract

1. The sole object of the Contract shall be the service agreed in the agency agreement. Any amendments, additions and side agreements shall be binding only if confirmed by explido GmbH in writing.
2. Contractual services not stated in the agency contract including in particular those announced for promotional purposes, shall only become part of the Contract, if expressly confirmed by explido GmbH in writing. explido GmbH reserves the right to make any reasonable changes owing to technical developments.
3. Consultancy services and information of any kind shall be binding only if confirmed in writing.

4 Contract Term

1. The Contract shall have a minimum term of one year. The Contract may be terminated for the first time by either contracting party on expiry of the minimum term. The notice of termination shall be received by the contracting party at least three months prior to the expiry of the Contract term. If the Contract is not terminated by either contracting party, the Contract shall be renewed automatically for a further year. The provision contained in the second sentence shall apply accordingly to the termination of each subsequent term.
2. The above provision shall apply only if nothing to the contrary is agreed in the offer and/or the agency agreement.

5 Payment Terms

1. The agreed fees shall become due for payment on receipt of the invoice. The invoice sum shall be credited to the bank account of explido GmbH no later than 10 days after receipt of the invoice.
2. In the event that the contracting party defaults in payment, explido GmbH shall be entitled to charge interest in the sum of 8% above the relevant base lending rate. Any further claims for additional default damages shall remain unaffected thereby.
3. The prices stated in the offers or in any additional services are net prices and are exclusive of the current statutory VAT.
4. In case that after the making of the Contract reasonable doubts arise whether the contracting party is fully able to pay, explido GmbH & Co. KG shall be entitled to request that a security be provided or to withdraw from the Contract.
5. explido GmbH uses the services of networks. In case the provider's prices increase, explido GmbH shall be entitled to pass on to the contracting party such costs. explido GmbH shall announce such price adjustment at least four weeks in advance and shall state the effective date for the price adjustment.

6 Right of Retention, Set-off, Assignment

1. The contracting party may reserve a right of retention only if it arises from the same Contract. Any other rights of retention vis-à-vis explido GmbH shall be excluded, irrespective of the legal relationship on which they are based.
2. The contracting party may set-off claims only if such claims have been accepted and established by final judgment.
3. The contracting party's rights may be assigned only following the written consent of explido GmbH.

7 Copyrights

1. To the extent that the contracting party submits to explido documents, files, records, graphics, photographs or any other data carriers (hereinafter called "the Works"), explido, for the duration of the Contract term, shall have a non-exclusive licence to use the Works protected under copyright law. Explido shall be entitled to copy or distribute such Works in order to

perform its obligations under the Contract. Explido shall be prohibited from using the Works for purposes other than the contractual purpose.

2. To the extent that during the Contract term copyrighted Works are created through explido performing its duties under this Contract, the contracting party shall obtain an exclusive unlimited, irrevocable and transferable licence for any and all types of use of such Works. Explido shall be entitled merely to use the Work results for reference purposes and to present its capabilities provided that by using the Works, no master data shall be disclosed to third parties. We expressly refer to the data protection provisions contained in clause 8.
3. In relation to the contractual party, all other rights pertaining to inventions, copyrighted Works as well as technical industrial property rights of explido GmbH or its vicarious agents shall belong exclusively to explido GmbH unless otherwise provided in the agency agreement.
4. In particular, any copying of GmbH software, any disclosure of logos or software received as well as the development of similar concepts shall be prohibited both under the statutory provisions and under the Contract, unless permitted in writing.
5. The contracting party shall guarantee to explido GmbH that it has all rights in the logo, the products and keywords, as well as any other copyrighted items supplied by the contracting party.

8 Third Party Rights

1. The contracting party shall guarantee that all documents, information, records, graphics, films, and audio files, handed over to explido by the contracting party or its vicarious agents to perform its contractual duties, and shall be free from third party rights. This shall apply in particular to keywords provided to explido, which are to be used for search engine optimisation or for search engine marketing.
2. The contracting party shall indemnify explido against any and all third party claims arising from the breach of third party rights owing to the use of information received from the contracting party. The contracting party shall reimburse to explido any and all costs and losses incurred by explido in relation to third party claims made in respect of the use of the contracting party's information. Explido shall be entitled to use legal remedies against any third party measures. In this respect the contracting party shall indemnify explido in respect of all costs in connection with the claims of such rights.
3. In return, explido agrees to notify the contracting party forthwith of any claims made for breaches of the law and agrees only to make out of court settlements or court settlements following prior consultation with the contracting party.

9 Data Protection

1. explido GmbH collects, processes and uses personal data of the contracting party in an automated process to the extent that such data is necessary to make, draft and/or amend the agency agreement (master data) in accordance with sections 28 BDSG (Federal Data Protection Act), 14 TMG (Telemedia Act).
2. In addition, explido GmbH collects, uses and processes usage data and billing information of the contracting party, if necessary, to enable the use of telemedia (usage data) as well as for billing purposes in accordance with sections 28 et seqq. Federal Data Protection Act (BDSG), 15 TMG.

10 System Integrity

1. The contracting party shall be prohibited from using mechanisms, software or other scripts in connection with the explido GmbH software, which may interfere with the functioning of the software, interfaces, affiliate measures and campaigns of explido GmbH. The contracting party shall not take any measures which may result in undue or excessive strain on the explido GmbH software.
2. Should the contracting party wish to take such measures, it shall notify explido GmbH in advance, in good time. The contracting party shall then be entitled to carry out the measures, if explido GmbH approved the written notification of the measure in writing.

11 Warranty

1. explido GmbH warrants that on annual average the terminal used by explido GmbH to operate the system can be accessed 98.5% of the time. This excludes periods, in which the terminal cannot be accessed on the internet by reason of technical or other problems outside the control of explido GmbH (force majeure, third party fault etc.). explido GmbH may restrict access to the services, if required for the security of the network operation, maintenance of net integrity including, but not limited to avoiding disruptions regarding the network, internet, software or stored data.
2. If the contracting party uses third parties to perform a service, explido GmbH can give no warranty for this.

12 Liability

1. The contracting party may rescind the Contract, if performance thereof becomes impossible, fully and finally, prior to the passing of risk or in case of delay, if the performance did not take place within a reasonable period of time, which may not be less than one month, unless the event preventing performance is not for the most part the responsibility of explido GmbH or is the result of force majeure.
2. In case the performance becomes impossible during default of acceptance or through fault of the contracting party, the contracting party shall remain liable to provide counter-performance.
3. If the contracting party or a third party make changes to the campaign, the homepage or the affiliate measures without the prior written consent of explido GmbH, explido GmbH shall not be liable for any consequences resulting therefrom. This shall not affect the period of limitation.
4. All claims for damages or reimbursement of futile expenses on the part of the contracting party against explido GmbH shall be excluded irrespective of their legal basis, unless explido GmbH acted intentionally or with gross negligence or committed a breach of material contractual duties through minor negligence.
5. In case of gross negligence and/or a breach of a material contractual duty through minor negligence, damages shall be limited to the loss that is typical and foreseeable. Any further liability shall be accepted only when covered by the business liability insurance.
6. Liability for loss or damage that does not directly arise from the subject of the Contract shall be excluded except in cases of intent or gross negligence.

7. Liability for personal injury, for the lack of a warranted quality for which a guarantee was given by explido GmbH as well as liability under the Product Liability Act shall remain unaffected thereby.
8. A limitation period of one year shall apply to all claims for damages or reimbursement of futile expenses made against explido GmbH on the basis of contractual liability or otherwise, except in cases of intentional conduct and personal injury. The limitation period shall start at the time stipulated in section 199 German Civil Code (BGB). The claim shall be time barred on expiry of the maximum periods stated in section 199(3) and (4) BGB. Other provisions regarding the limitation period in these terms shall remain unaffected thereby.

13 Final Provisions

1. The legal relationship between explido GmbH and both domestic and foreign Contract partners shall be subject exclusively to the substantive law of the Federal Republic of Germany. The United Nations Convention on the International Sale of Goods shall be excluded.
2. Augsburg shall be the place of performance for all rights and obligations arising out of this Contract. This shall apply to secondary and substituted obligations as well. The non-exclusive legal venue for this Contract and all legal matters in relation to or arising from this Contract shall be Augsburg for both parties.
3. explido GmbH reserves the right to amend the present T&C at any time and without stating reasons. The amended terms shall be sent to the contracting party by email two weeks prior to their becoming effective. If the contracting party fails to object to the new T&C within two weeks of the receipt of the email, then the amended T&C shall be deemed accepted. In the email containing the amended terms, GmbH shall expressly point out to the contracting party the 2-week period.
4. Should a provision of this Contract be or become invalid or unenforceable in full or in part, then this shall not affect the validity of the remainder of the Contract. Rather, the parties hereby agree to replace the invalid or unenforceable provision with a provision that comes as closely as possible to what was intended by the parties in commercial terms. The same shall apply to the filling of loopholes in the Contract, if relevant.