

## General Terms and Conditions for Performance Marketing of RESOLUTION MEDIA Germany GmbH

### Art. 1 General, scope of application, differing terms and conditions

(1) These *General Terms and Conditions for Search Engine (SEO, SEA) and Affiliate Marketing* of RESOLUTION MEDIA Germany GmbH (hereinafter referred to as RESOLUTION MEDIA) apply solely in relation to companies (hereinafter referred to as customers) within the meaning of Section 14 of the *Bürgerliches Gesetzbuch (BGB)* (German Civil Code) i.e. customers which, when concluding a legal transaction, are acting in the performance of their commercial or independent professional activities.

(2) These General Terms and Conditions exclusively apply to business relations between RESOLUTION MEDIA and the customer, also to information and advice. If the General Terms and Conditions are introduced in the business with a customer, they shall also apply to all further business relations between RESOLUTION MEDIA and the customer unless otherwise expressly agreed in writing.

(3) Differing general terms and conditions of the customer shall only apply if and when RESOLUTION MEDIA expressly acknowledges them in writing. Silence on the part of RESOLUTION MEDIA regarding such differing general terms and conditions shall in particular not be deemed acknowledgement or consent, and this shall also apply to future contracts.

(4) Amendments to these General Terms and Conditions shall take effect and shall become an integral part of the contract if the amendments were made available to the customer in writing and the customer has not objected to the amendments in writing within one month of receipt. RESOLUTION MEDIA must expressly refer to this legal consequence in its letter when sending the amended General Terms and Conditions. If the customer objects, the General Terms and Conditions underlying the contract until then shall continue to be valid.

### Art. 2 Conclusion of contracts, scope of services

(1) The services to be provided respectively by RESOLUTION MEDIA, inter alia Search Engine Optimizing (SEO), Search Engine Advertising (SEA), Google Analytics, Double Click, Affiliate Marketing etc., shall be set out respectively in RESOLUTION MEDIA's quotation underlying the contract which shall include a detailed description of the services and, if applicable, supporting documentation on this and guidelines of RESOLUTION MEDIA. RESOLUTION MEDIA's quotation shall, therefore, determine the content of the contract unless otherwise expressly agreed in writing. The documentation supporting the quotation shall be provided to the customer together with the quotation. A contract shall be created by the customer's acceptance of the quotation.

(2) RESOLUTION MEDIA's measures in the field of the services to be provided by RESOLUTION MEDIA are aimed, unless otherwise stipulated in RESOLUTION MEDIA's quotation, at providing the service/action to e.g. increase the placement of the customer's website in the search results, improve the presence on the market, place and link advertising etc. RESOLUTION MEDIA does not, however, promise success will result from the above.

(3) RESOLUTION MEDIA is entitled at any time to use other RESOLUTION MEDIA companies affiliated pursuant to Sections 15 et seq. *AktG* (German Stock Corporation Act) and sub-contractors (e.g. media agencies) to perform its services.

### Art. 3 Customer's duties and obligations

(1) The customer shall be obliged to cooperate at all times as required in respect of the services owed by RESOLUTION MEDIA. In particular, the customer must provide all necessary documents, access and/or information required for RESOLUTION MEDIA to perform the services (e.g. keywords, advertising texts etc.) in due time and without being requested to do so.

(2) The customer shall ensure that its website or the advertisement to be placed by RESOLUTION MEDIA complies with applicable legal provisions, especially that it does not infringe any third-party rights. The customer may use in particular only keywords and trademarks which it is entitled to use and the use of which does not infringe third-party rights.

RESOLUTION MEDIA shall not undertake any legal review of the proposed keywords and trade marks as well as websites, in particular of risks under trade mark law. The customer's blocking notices for specific keywords shall, however, be observed.

(3) The customer shall furthermore ensure that its website is regularly accessible and any login data which RESOLUTION MEDIA requires to provide the services are not changed without advance notice. If the website cannot be accessed, this can negatively affect RESOLUTION MEDIA's optimisation measures.

(4) In the case of tracking services, RESOLUTION MEDIA recommends that the customer integrates the tracking scripts recommended by RESOLUTION MEDIA permanently in the customer's website in order to allow measurement of performance. The customer shall, however, itself be responsible for the specific use and the nature/scope of the use of the scripts.

(5) If the above-mentioned duties and obligations are violated, the customer shall be obliged to indemnify RESOLUTION MEDIA against damages and claims of third parties arising therefrom.

### Art. 4 Service dates, default

(1) Binding dates and periods to provide the services must be expressly agreed in writing. If dates and periods are not binding or approximate (approx., about etc.), RESOLUTION MEDIA shall use its best efforts to comply with them.

(2) A commercial transaction for delivery by a fixed date shall only exist if RESOLUTION MEDIA has expressly confirmed such transaction in writing or the legal requirements for a commercial transaction for delivery by a fixed date exist.

(3) If RESOLUTION MEDIA defaults in providing the services, the customer must first set RESOLUTION MEDIA a reasonable extension of time to perform the services of at least 14 days unless this is unreasonable in the specific case.

### Art. 5 Force majeure and other obstructions

(1) If events of force majeure occur, RESOLUTION MEDIA shall notify the customer in due time in writing or text form. In such case, RESOLUTION MEDIA shall have the right to postpone the provision of the services for the duration of the obstruction, or to rescind the contract in whole or in part because of the part not yet fulfilled if RESOLUTION MEDIA has met its foregoing duty to provide information. Events of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks and company obstructions through no fault of RESOLUTION MEDIA e.g. due to fire, water and damage to machinery, and all other obstructions which, when considered objectively, were not negligently caused by RESOLUTION MEDIA.

(2) If a date or period is agreed with binding force to provide the service and this date or the period is exceeded due to events according to Art. 5 (1), the customer shall have the right, after a reasonable extension of time has elapsed without result, to rescind the contract because of the part not yet fulfilled if the customer cannot be objectively expected to adhere further to the contract. The customer shall have no further claims, especially claims for damages, in such case.

### Art. 6 Uses of the services of RESOLUTION MEDIA

(1) If the granting of rights of use is the object of the agreed service, the customer shall have a simple, non-exclusive right to use the services. The customer may use the services only to the extent agreed in the contract.

(2) A direct or indirect use of the services provided by RESOLUTION MEDIA by third parties shall only be permitted with the express written consent of RESOLUTION MEDIA. "Third parties" within the meaning of this provision are also group companies as defined by Section 15 of the German *Aktiengesetz* (Stock Corporation Act) or otherwise affiliated companies or shareholders of the customer.

### Art. 7 Payment terms

(1) Unless otherwise agreed, the services provided by RESOLUTION MEDIA shall be invoiced to the customer each month, depending on the quotation, on an hourly, daily or flat-rate basis.

(2) In the field of Affiliate Marketing, RESOLUTION MEDIA can furthermore be remunerated on the basis of a percentage share in the customer's sales. In such case, the customer shall be obliged to notify RESOLUTION MEDIA each month of the corresponding sales figures. Further details on this are stipulated in RESOLUTION MEDIA's respective quotation.

(3) Invoices of RESOLUTION MEDIA shall be respectively due for payment net plus value added tax at the respective legally valid rate in each case within 10 days of the invoice date. The date payment is received by RESOLUTION MEDIA or credited to the account shall be deemed the payment date. In the case of a corresponding agreement in the quotation, RESOLUTION MEDIA shall also have the right to invoice the customer for services ordered in advance on a quarterly basis. The payment term according to sentence 1 above shall then apply accordingly.

(4) RESOLUTION MEDIA reserves the right, by way of derogation from the above payment term pursuant to Art. 7 (3), to invoice the customer separately for the respectively provided services resp. service phases and to require immediate payment of the corresponding amounts.

(5) The objects supplied by RESOLUTION MEDIA when providing the services shall remain its property until all claims under the business relationship with the customer have been settled in full.

(6) If the customer defaults in payment, RESOLUTION MEDIA shall have the right, subject to the assertion of any further damage, to calculate default interest of 9% above the respective base interest rate at the time the claim for payment becomes due.

#### **Art. 8 Right of set-off and right of retention**

(1) The customer shall have a right of retention or right of set-off only with respect to those counter-claims that are not disputed or have been recognised by declaratory RESOLUTION MEDIAment.

(2) The customer can only exercise a right of retention if its counter-claim relates to the same contractual relationship.

#### **Art. 9 Notice of defects, warranty, breach of duty**

(1) The customer shall give notice of recognisable defects in RESOLUTION MEDIA's service immediately but at the latest 12 days after the service is provided. Notices of defects must include a detailed description of the defect. Failure to give notice of defects in due time shall exclude any claim by the customer for breach of duty due to defective performance.

(2) Notices of hidden defects must be given immediately after they are recognised but at the latest within the statutory period of limitation specified in Art. 9 (5). Notices of defects must include a detailed description of the defect. Failure to give notice of defects in due time shall here too exclude any claim by the customer for breach of duty due to defective performance.

(3) Notices of defects according to Art. 9 (1) and Art. 9 (2) must be given in writing. Any notice of defect not given in writing shall also exclude any claim by the customer for breach of duty due to defective performance.

(4) RESOLUTION MEDIA shall provide a warranty for verifiable defects for a period of one year, calculated from the date the statutory period of limitation begins. This shall not apply if RESOLUTION MEDIA is culpable of fraudulent intent, gross negligence or intent.

(5) The foregoing statutory period of limitation shall also apply to competing claims in tort and to any claims from consequential damage caused by a defect.

(6) Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of Art. 10.

#### **Art. 10 Liability, limitation of liability**

(1) RESOLUTION MEDIA shall be liable in principle only for its own intent and gross negligence and intent and gross negligence of its legal

representatives and vicarious agents. The liability of RESOLUTION MEDIA and that of its legal representatives and vicarious agents for slight negligence shall, therefore, be excluded except in the following cases:

- (a) breach of material contractual obligations i.e. such obligations, the fulfilment of which defines the contract, and on which the supplier may rely;
- (b) breach of obligations within the meaning of Section 241 (2) BGB if it is no longer reasonable to expect the customer to accept the service of RESOLUTION MEDIA;
- (c) injury to life, limb and health;
- (d) the assumption of a guarantee for the quality of a service or the existence of an outcome of performance;
- (e) fraudulent intent or other cases of liability prescribed by law.

(2) RESOLUTION MEDIA shall be liable only for typical and foreseeable damage unless RESOLUTION MEDIA can be reproached for intentional breach of duty or a case of injury to life, limb and health or other cases of liability prescribed by law exist.

(3) Except in the cases pursuant to Art. 10 (1) (a) to (e) above, the liability of RESOLUTION MEDIA shall be limited in total to a maximum amount of liability of EUR 2.5 million for each individual contract.

(4) Liability for damage other than the liability stipulated in the above paragraphs shall be excluded without regard for the legal nature of the asserted claim. This shall apply in particular to damage claims arising from negligence when concluding the contract, due to other breach of duty or due to claims in tort for compensation in respect of property damages pursuant to Section 823 BGB.

(5) Exclusion resp. limitation of liability according to the foregoing Art. 10 (1) - (4) shall apply to the same extent for the benefit of executives and non-executive employees and other vicarious agents as well as sub-contractors.

(6) Claims by the customer for damages from this contractual relationship may only be asserted within a preclusion period of one year as of commencement of the statutory period of limitation. This shall not apply if RESOLUTION MEDIA is culpable of fraudulent intent, intent or gross negligence and in the case of a claim arising from tort.

(7) There is no connection between the reversal of the burden of proof and the foregoing stipulations.

#### **Art. 11 Confidentiality, data privacy**

(1) The parties undertake to keep confidential such facts, documents and know-how, of which they become aware in the course of implementing the contractual relationships, and which contain technical, financial, business or market-related information about the company of the other contracting party, if the respective information has been designated as confidential or there is an obvious interest in its confidentiality (hereinafter referred to as "Confidential Information").

(2) The respective party receiving the information shall use the Confidential Information exclusively for the purpose of implementing and performing the contractual relationship in accordance with the contract and the individual contracts based thereon.

(3) The obligation of confidentiality according to Art. 12 (1) above shall not exist if the respective Confidential Information at the time it became known was already in the public domain or shall enter the public domain at a later date resp. was already known to the party receiving the information or had to be disclosed pursuant to a mandatory legal obligation, judicial decision or order of a public authority or supervisory body.

(4) RESOLUTION MEDIA shall collect, process and use, within the meaning of the *Bundesdatenschutzgesetz* (Federal Data Protection Act) (*BDSG*) as respectively amended, all information with personal data which it receives to perform the contract.

#### **Art. 12 Termination / Term**

(1) Contracts for which a period of notice was not agreed and contracts concluded for an indefinite period can be terminated in each case by

giving notice of one month to the end of a quarter. Furthermore, the term pursuant to RESOLUTION MEDIA's quotation shall apply.

(2) This shall not affect the right of either party to terminate the contract without notice for good cause. RESOLUTION MEDIA shall have the right to terminate the contract without notice for good cause in particular if the customer defaults in whole or in part in the payment for services invoiced to the customer and the total amount due is more than 10 % of the agreed total remuneration.

(3) Notice of termination shall only be valid when given in writing.

#### **Art. 13 Written form**

All agreements, collateral agreements, warranties and amendments of contracts shall only be valid when given in writing. This shall also apply to any waiver of the written form agreement itself. Verbal amendments or modifications of contracts shall be invalid. This shall not affect the precedence of an individual agreement (Section 305 b BGB).

#### **Art. 14 Final provisions**

(1) Place of performance for these General Terms and Conditions is the registered office of RESOLUTION MEDIA.

(2) Any disputes arising between the parties shall be settled exclusively before a competent court of law at the location of RESOLUTION MEDIA's registered office. RESOLUTION MEDIA shall, however, also have the right to bring an action against the customer at its place of general jurisdiction.

(3) German law shall apply exclusively hereto, to the exclusion of the UN Sales Convention (CISG).

(4) The transfer of rights and obligations of the customer arising from a contract concluded with RESOLUTION MEDIA shall require the written consent of RESOLUTION MEDIA.

**Status: November 2018**