

1. Scope of application

These General Terms and Conditions ("GTC") shall form an integral part of all contracts concluded between FOCUS Institut Marketing Research Ges.m.b.H. or companies affiliated with FOCUS Institut Marketing Research Ges.m.b.H. within the meaning of § 189a Z 8 UGB ("FOCUS") and their clients. FOCUS shall provide its services exclusively on the basis of these GTC, so that any declarations to the contrary by the contractual partner, possibly with reference to its own GTC, shall be deemed not to have been made and shall therefore not become part of the contract even if FOCUS does not expressly object to any declarations to the contrary.

2. Right of use

The data transmitted by FOCUS to the client shall be strictly confidential and may only be used by the client for internal purposes. Unless otherwise agreed in these GTC, FOCUS hereby grants the client and the companies affiliated with the client within the meaning of § 189a Z 8 UGB (Austrian Commercial Code) an unlimited, non-exclusive, worldwide, non-transferable right of use for internal purposes only and furthermore authorises the client to reproduce and modify the data supplied to the client and to create works based thereon. The data may not be used or utilised by the client for purposes other than those expressly agreed in the contract. If the client passes on data to companies affiliated with him within the meaning of § 189a Z 8 UGB, the client shall be responsible to FOCUS for ensuring that these companies also comply with all obligations assumed by the client under points 2 and 3 of these GTC; the client shall therefore be responsible to FOCUS for any breaches of these provisions by these affiliated companies in the same way as for his own breaches.

3. Transfer right

The passing on of the data supplied by FOCUS to the client to third parties, even if only in part (against payment or free of charge, in writing or verbally), or any other use of the same (e.g. for advertising, related products, etc.) by third parties shall not be permitted unless FOCUS has expressly agreed to this in writing. If the client violates this provision, he shall pay FOCUS a reasonable usage fee based on the fee agreed in this contract. Furthermore, the client shall pay FOCUS a penalty in the amount of EUR 10,000.00, which shall not be subject to the right of judicial mitigation. FOCUS expressly reserves the right to assert claims for further damages.

4. Power of attorney

The person signing on behalf of the client guarantees to be authorised to submit the offer or to conclude this contract or, in the case of collective signing authority, to be expressly authorised by the other authorized representative(s) to conclude this contract, so that this contract is concluded on the basis of the authorisation with his/her sole signature.

5. Copyright

All copyrights in connection with the compilation and delivery of data shall remain with FOCUS, unless expressly agreed otherwise in writing in the contract.

6. Pricing

The price lists, order confirmations and quotations issued by FOCUS contain net prices which shall apply in each case for the period up to the end of the calendar year in which the quotation was submitted or in which the subscription was concluded. The client hereby accepts that the present study is a multi-client study and is therefore not exclusive and that there is therefore mutual agreement with regard to all data, images, etc. collected.

7. Price adjustment

The agreed fee amounts to be paid by the client shall be indexed annually with effect from 1 January of each year on the basis of the Consumer Price Index 2020 (CPI 2020) or the index replacing it. The price change shall be made to the extent that corresponds to the average change in the Consumer Price Index 2020 or the index replacing it in the period from October of the year preceding the previous year to September of the previous year of the year in which the index change takes effect. Price increases implemented by FOCUS that exceed this amount shall require appropriate justification. In this case, the client shall have the right not to accept the price increase in excess of the inflation adjustment and, if FOCUS insists on the price increase, the right to terminate the contract with immediate effect.

8. Expenses

The prices to be paid by the client shall result exclusively from the written confirmation of FOCUS, whereby ancillary costs such as transport costs, etc. are not included, but shall be invoiced separately.

9. Terms of payment

All payments are due immediately upon receipt of the invoice without discounts and rebates and are payable within 14 days.

10. Payment modalities

Requests regarding special invoicing modalities (e.g. invoicing address differing from that of the contractual partner) can only be taken into account if they are communicated before conclusion of the contract and accepted by FOCUS in writing. Invoices cannot be amended after they have been issued.

11. Compensation for damages

In addition to charging statutory default interest (§ 456 UGB), FOCUS shall be entitled to assert further claims for damages in the event of late payment and to charge reminder fees of EUR 75.00 for each reminder, whereby the right to assert any higher collection fees is expressly reserved.

12. Liability

FOCUS shall render the contractually owed services with the diligence of a prudent businessman. Liability for slight negligence shall be excluded. Irrespective of this, FOCUS's liability for damages caused by gross negligence shall be limited to the total amount of the agreed annual fee for the respective individual order. Liability for consequential damage shall be excluded in any case, unless such damage was caused by FOCUS through gross negligence or wilful misconduct.

13. Liability for defects

The warranty period is six months from delivery of the respective data. Defects must be reported by the client in writing without delay within the warranty period, otherwise the client loses the right to claim. After expiry of the warranty period or in the event of failure to give immediate written notice of a defect, defects can no longer be asserted, irrespective of the specific legal basis on which the client relies. After expiry of this period, the claim shall lapse, so that no corresponding defences can be raised.

14. Remedy of defects

FOCUS shall be entitled to rectify any defects by improving or supplementing the missing items. The client may only demand cancellation of the contract or a price reduction if FOCUS has either rejected the improvement in writing without justification or if the second attempt at improvement has failed.

15. Confidentiality

FOCUS undertakes to keep the data transmitted by the client confidential and not to pass them on to third parties and to use them exclusively for the provision of the contractually agreed services. The client declares that he will only provide FOCUS with data subject to the GDPR (General Data Protection Regulation) for the fulfilment of the contractually agreed purpose if this data does not conflict with the legitimate interests of third parties. FOCUS shall not be obliged to check the permissibility of data utilisation. The client shall indemnify and hold FOCUS harmless for any claims of third parties arising therefrom.

16. Findings

FOCUS shall be entitled to use the findings and data obtained through the provision of services for its basic research and also to utilise these findings and data commercially. However, any utilisation of findings or data may not contain the name of the client or any other references that could be used to infer the name or business of the client.

17. Choice of law/jurisdiction

This contract shall be governed by Austrian substantive law to the express exclusion of its rules on private international law. Any disputes (including disputes regarding the validity of the contract) arising out of or in connection with this contract shall be subject to the exclusive jurisdiction of the competent commercial court for Vienna I. (first district), depending on the amount in dispute for commercial matters.

18. Changes

Amendments and supplements to this contract must be made in writing. The requirement of the written form can only be waived in writing.

19. Special right/validity

Should individual provisions of this contract be or become invalid, the remainder of the contract shall remain in force. In the event of a discrepancy between the English and the German version of the GTC, the German version of these GTC shall take precedence.