

ODC SERVICES GMBH - TERMS & CONDITIONS

Subject to any variation agreed by the parties in writing, these terms and conditions constitute the terms and conditions solely govern the contractual relationship between the Client and **ODC Services GmbH**, Leonrodstraße 56, 80636 Munich („ODC Services“). Client's terms and conditions do not apply. This is also the case, if ODC Services does not specifically object, in part or in full, to such terms.

1. Definitions

Except where the context otherwise requires, in these terms and conditions, the following terms shall have the following meaning:

Client: contractual partner of ODC Services, as determined in the Proposal underlying an order. An agency will be contracting party, where the will to act on behalf and in the name of its Client is not apparent from the offer. The agency will upon request provide proof of due power of attorney.

Confidential information: all information which is confidential in nature, regardless of the medium, whether written, oral or otherwise, concerning each party and its business, but excluding any information (i) which is in the public domain; or (ii) becomes generally available to third parties through no fault of the other party; or (iii) which was lawfully in the possession of the other party prior to such disclosure; or (iv) the disclosure of which is required by law; or (v) the disclosure of which is expressly approved by the disclosing party.

Fee(s): The sum to be paid by the Client to ODC Services, as set out in the Proposal in consideration of ODC Services' provision of the Services. The Fee shall be exclusive of Value Added Tax and any all other taxes, fees or charges, if applicable, in connection with the contractual services that are to be paid by the Client.

Panelist: A registered Panelist of ODC Services.

Proposal: The written document, which outlines the specific details of the Services, which ODC Services proposes to provide for the Client subject to these terms and conditions. The proposal is subject to change and not legally binding but rather constitutes an invitation to the Client to place its offer on the proposal's terms.

Services: The services to be provided by ODC Services to the Client as set out in the Proposal and subject to these terms and conditions.

Written/in writing: Covers with exception concerning the following clause 3.3 (cancellation), the written form (§ 126b code of BGB) and in particular also fax and e-mail.

IHUT (In-Home Usage Tests): IHUTs are product tests in which Panelists receive a product for testing, delivered to their home to which the following survey refers.

2. Services by ODC Services, Client ' s responsibilities

2.1 ODC Services provides services in relation to market research surveys on the internet in compliance with the industry-relevant standards. The subject matter and scope of the Services to be provided is, unless otherwise specifically agreed in writing, the Proposal from ODC Services which has been signed and if applicable, confirmed by the Client (rf. clause 3.1 below). ODC Services may use third party suppliers for rendering of contractual Services.

2.2 The Client shall, at its own cost, provide to ODC Services all necessary documents or other materials and all essential data or other information relating to the provision of Services (for example in case that the questionnaires are hosted by the Client), within sufficient time to enable ODC Services to provide the service in accordance with the Proposal. The Client shall ensure the accuracy of all the information, data and instructions it supplies.

2.3 The Client warrants and represents not to influence number of valid answers, including by placing screenout questions at the end of the questionnaire, in order to achieve abortion of the survey.

2.4 The Client guarantees that material provided by the Client and its use pursuant to this agreement, as well as due performance of the project does not violate applicable or intellectual property or infringes the rights of any third party, regardless of nature (e.g. rights, copyright, personality rights).

2.5 The Client is obliged to review without undue delay the Services and results rendered by ODC Services.
Any service objections against are not raised without undue delay at least in writing shall be deemed duly performed.

3. Conclusion and termination of contract

3.1 A Proposal countersigned by the Client shall be deemed a binding offer by the Client to procure the Services, as described in and upon the terms of the Proposal, subject to these terms and conditions ("Client Offer"). The Client waives receipt of the acceptance of this Client Offer by ODC Services. If ODC Services has commenced performance of such a Proposal, this constitutes acceptance. ODC Services does not accept offers with a minimum value of less than 1.000,- €.

3.2 Timing and deadlines stated in the Proposal are non-binding, unless explicitly confirmed as binding. ODC Services will however use reasonable endeavours to provide the Services within the quoted timeframe.

3.3 Both parties may at any time terminate an order in writing with at least 7 days notice. Other termination rights remain unaffected.

3.4 In the case that the Client terminates the agreement according to clause 3.3, a fixed cancellation fee (up to the total Fee payable for Services) is to be paid as follows:

Cancellation	Fee payable
After order confirmation from the Client, but prior to receipt of a questionnaire by ODC Services	10% of the fee but at least € 1.000,00.
From receipt of questionnaire by ODC Services or forwarding of materials to ODC Services, but before invitations have been sent to the Panelists.	50% of the fee
After the invitations have been sent to the Panelists.	100% of the fee

These lump sums for reimbursement of expenses that may be demanded pursuant to above table in case of a cancellation prior to receipt of the questionnaire, becomes due also if after conclusion of the contract and after expiry of a reasonable curing period, set by ODC Services, has failed to perform the necessary act of cooperation of transmitting the questionnaire.

3.5 Above Fees become due also in case of termination, which is not based on clause 3.3.

4. Pricing, calculative foundations

4.1 The price calculation for Services by ODC Services is determined, among other things, by the following factors:

4.1.1 Incidence: Percentage of the target group within a pre-identified sample. The incidence is provisionally defined in the proposal. If during performance of Services, a deviating actual incidence becomes apparent, ODC Services has the right, at reasonable discretion (§ 315 BGB), to modify elements of the Fee affected thereby. Actual incidence rates will be calculated by ODC Services according to the following, industry standard formula:

Number of fully completed surveys divided by number of fully completed surveys ("completes") plus the number of participants screened out during the course of the interview ("screenouts").

4.1.2 Length of questionnaire: Expected average duration required by the test person to answer the survey.

4.2 As far as calculation of elements of the Fee are based on the completed answers, the number of questionnaires completed by Panelists („Valid Answers“) is relevant. Any questionnaire that, as a result of its configuration by the Client, for example the integration of questions just before the end of the survey that regularly lead to drop-outs (for example collection of personal data), is designed to prevent completion of the interview and therefore the logging as a Valid Answer, shall be deemed a Valid Answer. Client is required to prove that such a configuration has not been implemented. Any doubts are at his expense.

4.3 If it is established that a survey can, as a result of a problem for which the Client is responsible (defective server, defective landing page, inaccessible Client, etc.), not be accessed or not be completed or counted, ODC Services may, during such period, base accounting for Fees on the agreed price per Valid Answer with the assumed incidence and an average response rate of the Valid Answers of 50%, and based on the number of e-mails sent.

4.4 If, during a survey an unusually high quota of drop-outs ensues (more than 10%), and this is not a technical problem on the side of ODC Services, the cause is assumed to have occurred on the Client's side (for example: technical problems, unclear or long surveys, etc.). For the number of drop-outs ODC Services may then at their discretion demand an amount due of 50% of the otherwise relevant Fee per Valid Answer; unless the Client does prove that the relevant circumstances have not emerged from his sphere of responsibility. Drop out rates will be calculated by ODC Services according to the following formula: Number of drop outs divided by number of starters of the questionnaire.

4.5 If the project is not programmed and hosted on the servers of ODC Services (Sample Only), the Client has the responsibility to close all quotas as well as the project once the desired target number of interviews has been achieved. Any interviews achieved over the number of interviews requested will be added to the invoice at ODC Services discretion.

4.6 In the case that a Fee or part of a Fee was offered as „best effort“, ODC Services guarantees no minimum number of Valid Answers and Fees are calculated only based on the number of Valid Answers.

5. In-Home Usage Tests („IHUTs“)

5.1 Irrespective of dispatcher or manufacturer, the complete responsibility in relation to product sent is with the Client. The Client guarantees ODC Services that respective the product in question and its use, does not violate applicable law of the Federal Republic of Germany, nor of any other country in which the survey is carried out or the product is sent to. The Client guarantees that the product, is in no way creating any hazard for the participant can be assumed.

5.2 Without prejudice to other rights, ODC Services may refuse or terminate its participation in or performance of an IHUT, if justified concerns in relation to safety, legality or other legitimate doubts arise.

6. Survey results, usage

6.1 Time of delivery and format of data that has been collected for the Client within the scope of an order, including any processing and structuring (jointly referred to as “Results”), are set out by the order.

6.2 The Client guarantees that he will not use Results received from ODC Services for illegitimate purposes, in particular not in connection with misleading advertising.

7. Payment

7.1 If the due date of Fees or parts thereof is not specified explicitly, due date shall be conclusion of contract. The invoiced amount shall be paid within 10 days from receipt of the invoice by the Client.

7.2 The Client may only set off undisputed or claims bindingly and non-appealably adjudicated by a court.

7.3 Other reductions or deductions by the Client are not permitted.

7.4 Unless specifically agreed otherwise and provided Client is not responsible for any delay in performance of the Services, Client will be invoiced upon delivery of the data resulting from the Services. Where Client is responsible for such delay, ODC Services may invoice at such time due performance should have occurred pursuant the Proposal.

7.5 ODC Services may charge interest for delay and if applicable, maturity interest, at the respective statutory rate, until complete settlement of the invoice amount.

8. Data protection and nondisclosure

8.1 The parties shall respect all data protection laws and regulations applicable in the Federal Republic of Germany, in particular the Federal Data Protection Act (BDSG) and Telemedia Act (TMG). The parties will always undertake all commercially reasonable efforts to protect the confidentiality and integrity of the Panelist's data, but in any case to adopt the level of protection that is applied in relation to own confidential information and trade secrets. In particular where Client receives a Panelist's personal data from ODC Services, he hereby undertakes to treat such data strictly confidential and neither in full or in part, to pass on to a third party or allow access in another manner.

8.2 The Client will under no circumstances without prior written consent of ODC Services, further or otherwise contact Panelists, regardless of form of communication and whether for purposes of market or opinion research or other unless explicit or, where sufficient deemed consent of the Panelist has provided independent of the activity of ODC Services. The Client will by no means, third parties, attempt to acquire personal data from Panelists in connection with surveys, unless these are collected for the sole purpose of contacting the Panelist in direct connection with the answers provided in a survey. The use of the data collected, further to the purpose described afore, is not permitted. This is warranted by the Client.

8.3 The Client guarantees that any personal data received will be used, particularly processed, solely for the purpose defined in the order (e.g. for example posting of products for IHUTs). Where such purpose is reached or a Panelist has revoked consent for further use of his data, any such data shall be deleted completely, all copies destroyed and such to be confirmed to ODC Services upon request. Without prejudice to any other rights and remedies available to ODC Services, Client shall pay a contractual penalty of 10.000,00 € for every single case of culpable breach of the aforementioned obligation and warranties.

8.4 The parties will not disclose confidential information of the other party. This obligation expires 2 years after termination of this agreement, regardless of legal grounds, respectively from completion of the order.

9. Protection intellectual property

9.1 Data sets:

Unless otherwise agreed in the Proposal, all reports, charts, questionnaires and documents created by ODC Services in performing Services, are the property of the Client and may be made available to third parties or employees. Data sets collected via a pre-screening (i.e. outside of responses to the Client's questionnaire) remain the property of ODC Services and all rights remain reserved.

9.2 Dissemination of results:

Unless otherwise agreed in the Proposal, all Results and analysis produced in the context of provision of Services are the property of the Client and may, in accordance to the Client's stipulations, be published, quoted, reproduced, copied, or in other form, be made accessible to further employees of the Client or to third parties.

10. Limitation of liability, Indemnification by the Client

10.1 ODC Services represent that Services are rendered with due care and expertise in accordance with the Proposal. ODC Services is not liable for the correctness, quality or other property or feature of Services provided by third parties to the Client in connection with the provision of Services by ODC Services.

10.2 ODC Services shall not be liable to the Client for losses, damages, costs, expenses or other claims resulting from information or data delivered by the Client which is incomplete or incorrect, not accurate, illegible, in the wrong order, in the wrong format or otherwise impaired by errors of the Client.

10.3 ODC Services is only liable for injury to life, body or health if caused negligently or intentionally by ODC Services, its representatives or agents.

10.4 For other damages, ODC Services shall only be liable based on at least negligent breach of duty from ODC Services, its representatives or agents or at least negligent breach of essential contractual obligations ("cardinal duties") by ODC Services, its legal representatives or agents. A cardinal duty shall be considered any duty non-performance of which jeopardizes reaching the aim of this agreement, the agreement has from its purpose to confer upon a party or such which only enables due performance of the agreement and performance of which a party can regularly rely upon.

10.5 Damages for a slight negligence on the part of ODC Services shall be limited to the typically foreseeable damages for contracts of this kind.

10.6 The maximum liability pursuant to clause 10.5, shall be limited to the amount paid to ODC Services by the Client pursuant to the order, but no less than 1.000,- €.

10.7 The Client shall hold harmless and indemnify ODC Services, upon a first request, from any claims by third parties, as well as damages and costs (including appropriate costs for the legal representation), brought in connection with an alleged violation of a warranty or guarantee by the Client from this agreement with ODC Services.

11. Force majeure

Where failure to perform contractual duties is due to force majeure or other circumstances, ODC Services is not responsible for such duty shall be suspended as long as the impediment to perform caused by such events persists.

12. Miscellaneous

12.1 This agreement and all disputes in connection therewith shall be subject to the law of the Federal Republic of Germany, excluding its conflict of law principles. Exclusive venue of jurisdiction shall be Munich. ODC Services may choose to bring legal action at the Clients common venues of jurisdiction.

12.2 The confirmed Client Proposal as well as these terms and conditions represents the complete agreements of the parties, in relation to its subject matter. These replace all previously arrangements, conditions, negotiations and discussions between the parties whether verbal or made in writing.

12.3 Supplements or amendments, including to this clause, are effective only when made in writing and signed by representatives of the parties.

12.4 Any right or legal remedy of ODC Services from these terms and conditions shall be cumulative to any other rights or remedy available to ODC Services, regardless of whether or not these are regulated in the general terms and conditions.

12.5 If any stipulation in the agreement between ODC Services and the Client is held invalid or void, this shall not effect the remaining stipulation in this agreement. The parties shall endeavour to replace such invalid stipulation with a valid stipulation that comes as close as possible to the economic purpose of the invalid clause.

12.6 In case of discrepancies or uncertainty the German language version of these terms and conditions shall prevail.