

Terms and Conditions

BHM Media Solutions GmbH

Valid as of 1st October 2015

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1 Area of Applicability

These Terms and Conditions apply for the contractual relationship between BHM Media Solutions GmbH (in the following “BHMMS”), Universitätsstr. 62, 35037 Marburg, Germany and its clients. Differing Terms and Conditions of the client will not be accepted except if expressly agreed upon in writing.

BHMMS offers different services and service levels. Individual offers may include supplementary conditions and license provisions that supersede the provisions of these general terms and conditions.

2 Agreement

2.1 Subject Matter of Contract

All offers made by BHMMS are without engagement. The subject matter of the contract is the BHMMS products and services as offered in the current product description at the time of commission by the customer.

2.2 Contract Conclusion Process

By commissioning with BHMMS the customer represents that he / she intends to use the BHMMS services and / or the BHMMS products (contract offer by the customer). The contract between the customer and BHMMS becomes effective with written acceptance of the contract offer by BHMMS. BHMMS is not obliged to accept contract offers. Customers can also book additional services offered by BHMMS or terminate them in written form by taking the respectively agreed notice period into account. The contract for such additional services becomes effective upon confirmation by BHMMS or upon provision of the booked service following the customer's request for the provision of said service.

2.3 Contractual Service

BHMMS owes the respective service covered by contract in accordance with the respective service description in place upon conclusion of the contract. BHMMS owes, if not otherwise specified in the respective service description, the provision of the BHMMS services. In case of unforeseeable circumstances BHMMS has the right to suspend BHMMS services for the purposes of maintenance or repair, should this be required for the stable and secure operation of services. A guarantee in the legal sense will only be provided by BHMMS on the basis of a written guarantee agreement employing the designation “Guarantee”.

3 Prices and Terms of Payment

3.1 Prices

The prices for services utilized by the customer are based on the relevant order forms / offers and the respective pricelists. BHMMS is entitled to decline certain payment methods in specific cases, provided BHMMS has reasonable grounds for doing so. Payment by check is subject to prior individual agreement with BHMMS.

3.2 Invoices

Customer invoicing is carried out in electronic form, unless agreed otherwise with the customer.

3.3 Payment Dates and Delays

Payments for a given service period are to be made in advance without deductions. Fees dependent on the use of services are invoiced on a monthly basis subsequent to the provision of services. Payment of invoices is due within 14 days of the invoice date. Not making use of provided services does not free the customer from the obligation to settle due service payments.

If payment is delayed considerably, BHMMS has the right to suspend the provision of services, in particular the customer's access to the BHMMS services, at the customer's cost until all due payments are settled. In the case of suspended services, the customer's obligation to settle ongoing payments remains in place. After failure to adhere to a reasonable deadline BHMMS has the right to terminate the contract by extraordinary notice.

In the case of return debit notes and unpaid checks the customer must reimburse BHMMS for ensuing costs to the degree in which he / she is responsible for the underlying event.

Further going claims and rights on the part of BHMMS remain unaffected.

3.4 Offsetting

BHMMS claims may only be offset against claims that are undisputed or legally determined. The exercise of a right of retention is permissible only in as far as the counterclaim is based on the same contractual relationship.

3.5 Objections

Objections to the amount billed must be submitted to BHMMS in writing (see address above), by email to info@bhmms.com or by fax to +49 40 60942678-9 within six weeks upon receipt of the invoice.

If no objection is submitted by the customer within six weeks after the invoice date, the invoice is deemed as accepted. Legal claims on the part of the customer in the case of objections after said deadline remain unaffected.

3.6 Tariff Changes / Upgrades

The customer can upgrade to a higher BHMMS product / tariff at any time. The customer can select a more extensive service package of the product used by him at any one time. The tariff change is binding and is essentially equivalent to concluding a new contract based on the relevant conditions for the chosen service level, in particular the duration of the new contract which begins as of the tariff change. Any unused service payments will be transferred as a partial payment of the service charges for the new contract. A downgrade (change to a less comprehensive service package) is not possible during a current contract period.

4 Data Privacy and Security

4.1 Data Privacy

Data protection and data security play a particularly important role at BHMMS. BHMMS saves and uses personally identifiable data therefore only insofar as this is required for the processing of contract agreements between the customer and BHMMS. Personal data will not be forwarded to third parties as long as such forwarding is not necessary to provide or invoice (including debt collection) the contractual services or if there is a legal disclosure obligation. All BHMMS employees are obliged to keep data secret in accordance with the law.

The customer is hereby informed, in compliance with § 33.1 of the German Data Security Act, that his / her complete address, as well as certain other information provided in connection with the BHMMS service agreement and services, will be stored by BHMMS in electronic form and processed electronically for purposes occurring as a result of the agreement.

The customer is not permitted to compile the data collected by means of the BHMMS services with the personal data of third parties, in particular user statistics, or to use the data otherwise for the analysis of personal profiles. The customer is responsible for the permissible use of BHMMS functions in accordance with the relevant data privacy regulations.

4.2 Data Security

BHMMS hereby informs the customer that the privacy and security of data transmissions in open networks such as the Internet cannot be guaranteed based on the technology currently available. As a matter of course BHMMS has taken all the technical and organizational measures necessary according to the law to safeguard personal data saved at BHMMS against misuse and unauthorized access. However, it could be technically possible, under certain circumstances, for third parties to access the network security without authorization, especially for data transfers via the internet outside the BHMMS access area, and control communication traffic or monitor data traffic. Therefore, customers are responsible for the

security and safeguarding of their own data transferred via the internet or for data that can be reached from the internet.

The customer is responsible for regularly backing up any important data in accordance with the relevant requirements. BHMMS is in no way liable for any loss of data, unless brought about deliberately or by gross negligence on BHMMS part.

The customer must ensure that the servers and desktop PCs connected with the BHMMS services are configured with the latest security provisions (e.g. virus scanners with up-to-date virus definition signatures, firewalls) and that current security updates to the operating system and application software are installed, unless the customer has a legitimate reason for not doing so.

4.3 Customer Prudence

User accounts are not transferable and must not be relinquished to third parties. The customer is obliged to take appropriate steps to prohibit access to the BHMMS services by unauthorized persons. Confidential data such as user names and passwords or data for direct access to the BHMMS statistics must be treated confidentially and must not be disclosed to third parties under any circumstances. Any employees that have access to the BHMMS services must be obligated by the customer in writing to maintain confidentiality. In case of any misuse or suspected misuse the customer concerned will notify BHMMS without delay of the misuse or suspected misuse, by email to info@bhmms.com or by fax to +49 40 60942678-9. In the case of any use of the BHMMS services by unauthorized persons resulting from a breach of confidentiality, the customer is responsible for any ensuing damages.

5 Property Rights

BHMMS grants the customer, upon conclusion of the contract, the non-exclusive, non-transferable and non-sublicensable right to use the BHMMS services as specified in the contract. The right of use expires if the customer defaults on a payment owed to BHMMS.

The customer may use the data and evaluations obtained by means of the BHMMS services only for his / her own needs. The customer is not permitted to relinquish the use of BHMMS services to any third party without prior consent from BHMMS. Commercial utilization of the results of the BHMMS analyses for third parties is subject to a separate arrangement with BHMMS.

The customer is not allowed to

- change, translate, decompile, disassemble or otherwise misuse or create derived works based on the BHMMS documentation; information required to achieve interoperability with other independently developed computer programs, in accordance with § 69 e of the German Copyright Act, may be purchased from BHMMS on request based on the respective prices;

- transfer, lease, lend, or distribute the BHMMS software or services, or use them for services to or for a third party, or grant any rights to the BHMMS software or documentation or any other part of the BHMMS products to a third party in any form whatsoever, unless BHMMS has given its prior written consent to do so and all respective monetary and other conditions specified by BHMMS have been fulfilled; or
- change, remove, or obliterate the marks, labels or notices concerning copyrights or other intellectual property rights in the BHMMS software or documentation or any other part of the BHMMS products.

Any HTML or other code provided to the customer by BHMMS must be used by the customer as specified without modification.

Insofar as BHMMS has introduced technical protection the contracted products or services (for example, firewalls or security codes), the customer is not permitted to remove or circumvent these security measures.

The intellectual property rights and any other property rights to the BHMMS software and BHMMS services remain with BHMMS and / or BHMMS partners and suppliers.

6 Further Rights and Obligations of the Customer

The customer is responsible for implementing any requirements for the use of the BHMMS services at his / her own expense. This applies in particular to network connections (Internet connections), telecom connections as well as adequate trained personnel. The installation and integration of the BHMMS services is carried out by the customer.

The customer is not permitted to generate automated report queries via other means than those released by BHMMS for this purpose, e.g. via scripts or tools, without explicit consent from BHMMS.

Business customers are required to name a responsible contact person during registration who will be available at short notice during regular working hours (weekdays 10:00 a.m. to 6:00 p.m.) for questions concerning the cooperation with BHMMS.

BHMMS will provide important information to the customer by email. The customer is therefore required to check for new messages regularly in the email account provided during registration.

7 Warranty

The customer will immediately notify BHMMS in writing of any deficiencies and will support BHMMS in the analysis and elimination of errors in an adequate and reasonable way by providing exact error descriptions.

8 Other Liabilities

8.1 Liability on the Part of BHMMS

BHMMS is not liable for any disturbances, limitations or service obstructions nor for any interruptions or malfunctions of the BHMMS services based on circumstances beyond BHMMS realm of influence.

BHMMS is fully liable for damages that BHMMS has to account for as a result of intent, gross negligence or the breach of an essential contractual obligation (cardinal obligation). Essential contractual obligations are those that are required to be fulfilled to achieve the aim of the contract and those on whose compliance the customer, as contractual partner, can trust upon regularly.

Compensation claims (with the exception of warranty claims) based on simple negligence on the part of BHMMS are subject to a limitation period of one year after occurrence of the damage. In cases of slight negligence, BHMMS is fully liable only for harm to life and limb or health. If the breach of an essential contractual obligation is not based on intent or gross negligence, BHMMS liability is limited to typical damages that were reasonably foreseeable at the time the contract was concluded. A liability vis-à-vis commercial customers for lost income is excluded. Liability for any other damages is excluded, subject to the provisions of the German product liability laws and any contractual guarantees.

The aforementioned liability regulations also apply analogously as they pertain to the bodies, employees and authorized agents of BHMMS.

8.2 Infringements by the Customer

The customer pledges to abide by all applicable laws and contract provisions when using the BHMMS services. In particular, the customer will not impinge on any rights of third parties (e.g. personal rights, copyrights, trademark rights or other property rights, etc.) and will adhere to the applicable penal laws and regulations for the protection of minors.

The customer will indemnify and hold BHMMS harmless from damages resulting from any violation of rights for which the customer is responsible. This indemnification also includes the costs of legal defense up to a reasonable amount, at the most the amount specified by the applicable legal regulations of attorney fees and court costs.

9 Contract Period and Termination

The customer selects a contract period (service period) when concluding the contract. The contract may be terminated by either party by giving notice at least three months before the end of the selected contract period. If the contract is not terminated, it is automatically extended by another period of the same duration as selected contract period.

If the customer changes the contract period, this change applies as of the end of the contract period during which the change is made. It is not possible to shorten a current (active) contract period.

Termination of the contract must be carried out in writing.

The right to extraordinary termination for cause remains unaffected. BHMMS in particular has the right to an extraordinary termination (alongside other termination rights arising from these business conditions) in case of

- the customer has made or makes false statements upon registration or order of services, or during the duration of the contract;
- the customer has not settled due payments, after failure to adhere to an appointed deadline (cf. section 3);
- the customer has made changes to or otherwise modified the BHMMS software or other services associated with the contract;
- the customer publishes content on his / her website that is racist or pornographic, glorifies or trivializes violence, or is otherwise illegal or immoral;
- the customer impinges on the property rights of BHMMS or BHMMS contract partners;
- the customer breaches BHMMS general terms and conditions or any essential contractual obligations in a serious way.

Prepaid services will be reimbursed only in cases where BHMMS is responsible for the extraordinary termination.

Upon termination of the contract, BHMMS has the right to permanently delete all the data collected during the duration of services.

After the contract has ended the customer is no longer permitted to make use of the BHMMS software or other services associated with the contract. Any hardware and / or software provided to the customer must be returned to BHMMS without delay when the contract ends. The customer is required to delete any BHMMS software installed on his / her own computer systems or the computer systems of any third parties on his / her behalf and to remove any code applets provided by BHMMS from his / her website. If the customer does not remove this from his / her website, a notice referring to BHMMS will appear on the pages that still contain the code applets although the contract with BHMMS has ended.

10 Final Provisions

The interpretation of the terms of contract and the rights and obligations of the contract parties shall be based on the German version of these general terms and conditions.

If any provisions of these terms of business should be or become ineffective this shall not affect the effectiveness of the remaining provisions.

BHMMS has the right to call on third parties as required in order to fulfill its contractual obligations. BHMMS responsibilities remain unaffected in such cases.

All agreements are subject to the jurisdiction of the Federal Republic of Germany. The provisions of UN Sales Law do not pertain.

If the customer is a business, a public legal entity, or a public endowment, the place of jurisdiction is Hamburg, Germany.