

## 1. SCOPE OF APPLICATION

1.1 mercury black UG ("mercury black") is the provider of business consultancy and marketing services (collectively, the "mercury black Services"). The following General Terms and Conditions apply to all business relationships between mercury black and its customers with regard to the Customers' use of the mercury black Services. mercury black may offer additional services or revise any of the mercury black Services, at its discretion, and these General Terms and Conditions will apply to all additional services or revised services. mercury black also reserves the right to cease offering any of the mercury black Services.

1.2 These General Terms and Conditions constitute a material part of each agreement unless expressly agreed otherwise in writing, and they apply to any future business transaction between mercury black and the customer, even without express reference thereto.

1.3 Any deviating general terms and conditions of the customer as well as any deviations and/or amendments to these General Terms and Conditions shall only become part of the agreement if they have been expressly acknowledged by mercury black in writing. These General Terms and Conditions shall also apply exclusively if mercury black has not explicitly objected any contrary general terms and conditions or if mercury black unreservedly perform the mercury black Services in the knowledge of the customer's general terms and conditions. Individual agreements concluded with the customer in individual cases (e.g. in a Service Order) have priority over these General Terms and Conditions.

1.4 mercury black reserves the right to modify these General Terms and Conditions with effect for the future at any time. In this case, mercury black will notify the customer of these changes. The changes shall be deemed to be accepted if the customer does not object within four weeks after receipt of the amendment notification. mercury black will inform the customer in its amendment notification about the customer's right to object and the effects of a lack of objection. If the customer rejects the changes, mercury black has the right to terminate the agreement.

## 2. OFFER AND CONCLUSION OF A CONTRACT

2.1 Offers by mercury black are non-binding and subject to change, unless they are expressly identified as binding or contain a specific acceptance period. The offers will include, inter alia, the service fees payable by the customer to mercury black. Furthermore, the general description of the mercury black Services ("mercury black Services Description") will apply that is provided to the customer by mercury black or is available on the mercury black website.

2.2 The agreement between mercury black and the customer is concluded upon signature of an individual order ("Service Order") by mercury black and the customer. In order to conclude the agreement, the customer must send the countersigned Service Order to mercury black by email ("Acceptance"). In addition to any provisions contained in the

Service Order, these General Terms and Conditions shall apply.

2.3 The customer represents and warrants that all personal information as well as other relevant contractual data provided by the customer during the conclusion of the agreement are complete and correct. The customer is obliged to promptly inform mercury black about any changes to this data. In the event of a culpable breach of this obligation, mercury black is entitled to suspend the mercury black Services upon giving prior notice until the updated data is provided.

2.4 The customer acknowledges and agrees that contractual declarations (e.g. confirmation emails, amendments to the General Terms and Conditions as well as other notifications) may be sent in text form via email. They are deemed to have been received when they can be retrieved in the email inbox, which was specified by the customer under normal circumstances. However, notifications of the Parties regarding the termination of an agreement have to be made in writing to be valid.

## 3. MERCURY BLACK SERVICES

3.1 mercury black shall render the mercury black Services in accordance with the terms of the respective Service Order, the mercury black Services Description and these General Terms and Conditions.

3.2 The key performance indicators – if any – that are included in a Service Order are non-binding estimates. mercury black does not warrant that any service activities will achieve such key performance indicators and/or volumes. If an estimated or agreed benchmark cannot be reached within the agreed term, the Parties may either (i) revise the agreed term or (ii) terminate the activity at a mutually acceptable date before the originally planned termination date. In the latter case, the customer is only obligated to pay the service fees that was actually delivered.

3.3 In case of unforeseen events, mercury black is entitled to temporarily suspend the mercury black Services for maintenance purposes if this is necessary to ensure the proper operation of the mercury black Services.

3.4 mercury black is entitled to use the assistance of third parties in order to fulfil its contractual obligations.

3.5 The customer agrees to provide mercury black with any information and data on business and marketing objectives, targeted segments, etc. that are required to perform the mercury black Services in a timely manner.

## 4. FEES, PAYMENT

4.1 The fees for the mercury black Services are set out in the applicable Service Order. Unless explicitly stated otherwise, all fees are quoted exclusive of the statutory value-added tax (VAT) applicable at the time. Invoices will be sent to the customer via mail or in electronic form, unless expressly agreed otherwise.

4.2 The fees will be calculated and invoiced monthly on the basis of the delivered service as recorded by mercury black.

4.3 The payment of the invoices shall be due and payable within 30 days from the issue of the invoice. In the event of the customer's default of payment, mercury black will charge default interest in accordance with the statutory provisions. mercury black reserves the right to prove and assert greater damages due to default. If the customer's payments are considerably delayed, mercury black reserves the right to suspend the provision of any further services, in particular the customer's access to the mercury black Services, at the expense of the customer until all due payments have been made. In the event of suspended services, the customer is nevertheless obliged to pay the agreed fees. After having set the customer a reasonable deadline and expiration of that deadline, mercury black has the right to terminate the agreement with immediate effect. In case of returned direct debits or unpaid checks, the customer shall reimburse mercury black for the costs incurred to the extent that the customer was responsible for the event given rise to these costs. Further claims and rights to which mercury black may be entitled in this respect shall remain unaffected. Even if the customer does not use the provided mercury black Services, the customer is still obliged to pay the agreed fees.

4.4 Any complaints relating to an invoice must be submitted to mercury black in writing or by email to [finance@mercury.black](mailto:finance@mercury.black) within two weeks upon receipt of the invoice. If no such complaint has been made within two weeks upon receipt of invoice, the invoice is deemed to be accepted. mercury black will inform the customer in the invoice about the consequences of failing to submit a timely complaint.

## 6. GRANT OF RIGHTS, OWNERSHIP, COLLABORATION

6.1 Upon conclusion of the agreement, mercury black grants the customer the non-exclusive, non-transferable and non-sublicensable right to use the mercury black Services during the term of the agreement, insofar as this is necessary to use the mercury black Services according to the respective Service Order.

6.2 mercury black shall retain all intellectual property rights as well as any other property rights in and to the mercury black Services as well as other services that are provided under this contract, including source codes, databases, hardware and/or any other material (e.g. documentations, developments, functions, report templates, preparatory material, etc.).

6.3 Unless otherwise expressly agreed between the parties, mercury black is entitled to refer to the collaboration with the customer and to depict the customer's logo for self-promotional purposes.

## 7. REPRESENTATIONS AND WARRANTIES, INDEMNIFICATION

7.1 The customer represents and warrants that (a) the customer is entitled to market the product, (b) the customer holds the rights granted in the Creatives and (c) the Creatives, all

contents therein and its product (i) are fully compliant with applicable law, (ii) do not infringe any third party's rights, and (ii) do not contain or promote any illegal content, including but not limited to content that glorifies violence or war, is pornographic or harmful to minors, is deceptive or misleading, is defamatory or libellous; is liable to incite racial hatred or degrading, or is obscene or defamatory.

- Creatives are defined as advertising and marketing materials which are used for publicly promoting the products of the customer - including but not limited to all forms of digital advertising materials.

7.2 The customer shall indemnify, defend and hold mercury black harmless from and against any claims, liability, damage, loss and/or expense (including reasonable attorneys' fees and legal costs) arising from, relating to or in connection with a breach by the customer of any of the customer's representations and warranties made under this section 7.

7.3 mercury black shall indemnify, defend and hold the customer harmless from and against any claims, liability, damage, loss and/or expense (including reasonable attorneys' fees and legal costs) arising from, relating to or in connection with a breach by mercury black of any of mercury black's representations and warranties made under this agreement.

## 8. LIABILITY

8.1 mercury black shall be responsible that the mercury black Services correspond to their intended use. mercury black does not assume any liability for any damages resulting from a usage other than the intended use. The same applies to any damages resulting from a usage that is not in accordance with mercury black's instructions and recommendations or any other unauthorized usage.

8.2 The customer is obliged to duly examine the mercury black Services and notify mercury black of all noticeable defects detected in such examination ("Obvious Defects") without undue delay, but no later than a week from either (a) receipt of the respective performance report by mercury black or (b), if no such report is owed for a certain mercury black Service, upon the full supply of the respective mercury black Service. If the customer fails to give notice within the aforementioned time period, the respective mercury black Services will be deemed to be approved in accordance with the agreement with regard to such Obvious Defects. If a defect becomes evident at a later time ("Hidden Defects"), the customer is obliged to provide notice to mercury black without undue delay, but at the latest within three business days after discovery of the Hidden Defect. If the customer fails to give notice within the aforementioned time period, the respective mercury black Services will be deemed approved in accordance with the agreement also with regard to the Hidden Defect. For the observance of the aforementioned duty to report defects, it is sufficient if the customer sends a timely notification to mercury black. This section does not apply if mercury black has fraudulently concealed a defect.

8.3 mercury black does not assume any liability for any disturbances, limitations, interruptions or disruptions of the

mercury black Services, which are caused by circumstances beyond mercury black's area of responsibility.

8.4 Unless Section 8.6 below applies, the liability of the Parties for damages is excluded to the extent that the damages (a) were not caused by gross negligence or wilful misconduct of the other Party, its legal representatives, executive officers or other vicarious agents or (b) were not caused by a culpable, i.e. at least negligent breach of a material obligation by the other Party, its legal representatives, executive officers or other vicarious agents, which jeopardizes the attainment of the contractual purpose, in particular by a culpable breach of so-called "cardinal contractual obligations" ("Kardinalpflichten"). A cardinal contractual obligation accordingly is a material contractual obligation of a Party, the fulfilment of which is prerequisite for enabling the proper fulfilment of the agreement in the first place, and on which the other Party usually relies.

8.5 The liability of the Parties (a) in case of a culpable breach of cardinal contractual obligations, to the extent that it is not caused by gross negligence or wilful misconduct, as well as (b) in case of a grossly negligent breach of other obligations (i.e. non cardinal contractual obligations) by employees or vicarious agents of the Parties who are not legal representatives or executive officers of the Parties, is limited to damages that typically occur in transactions of this kind and that were reasonably foreseeable at the time the agreement was concluded.

8.6 The limitations and exclusions of the Parties' liability for damages set forth in Sections 8.4 and 8.5 above shall not apply to damages (a) for which a Party is liable as a result of a breach of a written and express guaranty by that Party as to the quality of the services, (b) caused by defects of the Services that were fraudulently concealed by mercury black, (c) resulting from injury of life, body or health, and/or (d) for which a Party is otherwise liable pursuant to applicable mandatory law and regulations where such liability cannot be excluded by agreement between the Parties in advance, e.g. any product liability under the German Product Liability Act ("Produkthaftungsgesetz").

8.7 The limitation period for any claims of the Parties arising from or in connection with the agreement (including any claims for defects of the mercury black Services) shall be one year from the provision of the respective mercury black Service or, respectively, acceptance of the respective mercury black Service (if acceptance is required under applicable law or agreed in the Service Order). This limitation does not apply to claims for damages, which are subject to the statutory limitation provisions.

## 9. TERM, TERMINATION

9.1 The term of the agreement is included in the Service Order. The termination of the agreement for convenience is expressly excluded. Special case contracts (for example: open-ended Service Orders) can be terminated on mutual consent with 5 business days' prior written notice.

9.2 The right to immediate, extraordinary termination with a cause shall remain unaffected. In particular, mercury black has the right to immediately terminate the agreement

- if the customer breaches its obligations pursuant to Section 7.1
- if the customer is in default of payment and does not settle the outstanding
- if the customer is insolvent, subject to insolvency proceedings, insolvency
- if the customer violates the provisions of these Terms and Conditions and fails 12 of these Terms and Conditions, payment upon receipt of a warning letter with a deadline for payment and expiration of that deadline to no avail, proceedings have been commenced or the commencement of insolvency proceedings is dismissed due to lack of assets, to remedy this violation upon receipt of a written request with an adequate deadline. No such request is necessary if it has no prospect of success or if the violation is so serious that mercury black cannot be reasonably expected to adhere to the agreement. A violation is also deemed serious if the customer has received notices of warnings several times because of similar violations.

9.3 The termination must be made in writing and be submitted via electronic mail.

## 10. CONFIDENTIALITY

10.1 The parties shall keep all documents, information and data, which have been disclosed during the course of the cooperation strictly confidential during the term of the agreement and for 2 years thereafter. The parties undertake to use the same degree of care in safeguarding the documents, information and data of the other party that is uses for its own confidential information, but at least with the due care of a prudent business man. All such documents, information and data shall be used exclusively to perform the contractual services.

10.2 These confidentiality obligations also apply to documents, information and data that relate to companies affiliated with the parties, other cooperation partners or contractors and to documents, information and data about customers and sales representatives of the parties.

10.3 These confidentiality obligations do not apply to documents, information and data that are in the public domain or later become part of the public domain through no breach of contract by a party, is required to be disclosed by operation of law, court or administrative order or that has been subsequently exempted from this confidentiality obligation by an agreement in writing, per fax or via email.

## 11. USE OF DATA, DATA PROTECTION

11.1 The customer is obliged to comply with the applicable data protection laws when using the mercury black Services. If applicable, the customer is also obliged to comply with the US Children's Online Privacy Protection Act ("COPPA") when using the mercury black Services.

11.2 The customer is obliged to (a) make available a privacy policy regarding its product that complies with applicable data protection laws, (b) ensure that its sites and/or apps clearly provide appropriate and sufficiently prominent notice to users regarding the collection and use of tracking data, (c) make available a privacy policy and (d) if required by applicable law, provide for a mechanism for users to opt out of tracking. If a user opts out, the tracking mechanisms provided for mercury black must be fully disabled in the customer's systems.

11.3 The customer is obliged to notify mercury black of any restrictions applying to the collection, processing and use of any user data in connection with an advertising campaign before the beginning of such advertising campaign, e.g. as a result from opt-outs by users or the lack of consent by users required under applicable law.

11.4 mercury black expressly agrees to not transfer any of the non-personally identifiable user data that the customer provided to mercury black in order to enable mercury black to conduct its services ("customer's first party data") to any other customer and to not combine and/or mix the customer's first party data with other advertisers' data.

11.5 The customer expressly agrees that mercury black has the right to use the non-personally identifiable user data as well as any use-related data that was collected, generated and/ or aggregated in connection with the customer's service activities in perpetuity in order to improve and provide the mercury black Services.

## 12. FINAL PROVISIONS

12.1 Place of performance and exclusive place of jurisdiction for all disputes between the parties shall be Berlin if the customer is a merchant, a legal entity under public law or a special fund under public law. Berlin shall also be the exclusive place of jurisdiction if the customer does not have a general place of jurisdiction in Germany, if the customer, once it has concluded the contract, moves its domicile out of Germany or whose domicile is unknown at the time the lawsuit is filed.

12.2 Any modifications and or amendments of offers and these General Terms and Conditions must be made in writing. This also applies in case of a nullification of the written form requirement.

12.3 If any provision of these General Terms and Conditions or part thereof is invalid or becomes invalid at a later time, the validity of the remaining provisions shall remain unaffected. The relevant provision shall be replaced by a provision that as closely as possible reflects the economic purpose of the invalid provision. The foregoing shall apply analogously if any provision has inadvertently been omitted.

12.4 Unless expressly agreed otherwise, the legal relationship between mercury black and the customer shall be governed by the laws of the Federal Republic of Germany (excluding the 1980 UN Convention on the Internationals Sales of Products).