

General Terms and Conditions (GTC)

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Preamble

These General Terms and Conditions (the “GTC”) govern the business relationship between fyncom GmbH, Ditmarstr. 42, 60487 Frankfurt am Main, Germany (the “Provider”) and its business customers. Services for consumers are excluded from these GTC. The following provisions set out the binding framework for the cooperation between both parties.

These GTC are a translation provided for convenience. In the event of any discrepancy, the German version prevails.

§1 Scope

(1) These GTC apply to all contracts between the Provider and business customers who make use of the Provider's services.

(2) Business customers are natural or legal persons acting in the exercise of their commercial or independent professional activity when entering into the contract.

§2 Subject Matter of the Contract

(1) The Provider renders services in the field of product evaluation. The subject matter of the contract is the performance of a test under the PM procedure together with the preparation and publication of the test report. The PM procedure is a testing method developed by the Provider, based on defined, transparent and published criteria; it constitutes a private certification and is neither an official governmental inspection nor a state-accredited conformity assessment.

(2) A test seal and a certificate are issued if the product reaches the certification threshold of 75 per cent (at least 225 of 300 points) as defined in the Evaluation Handbook. If the threshold is not reached, the product counts as tested; the customer receives the test report and the test record, but neither a seal nor a certificate. The applicable evaluation criteria are published in the current edition of the Evaluation Handbook.

(3) The fee is charged for carrying out the test and is independent of the outcome. Any influence by the customer on the evaluation is excluded.

(4) The specific scope of services follows from the licence or service package agreed. Amendments and additions require text form.

(5) No guarantee of success is given, in particular with regard to the test result, reach, visibility or sales.

§3 Additional Services

(1) Independently of testing, the Provider offers services in the areas of audience development, digital visibility consulting and design (graphics, video, copy). These services must be commissioned separately.

(2) Additional services under paragraph 1 have no influence on the conduct, the evaluation or the outcome of a test. They are neither a precondition for testing nor part of the scope of testing, and they are not offered bundled with certification.

(3) For content created in the course of additional services, the customer receives a simple right of use, unlimited in time and territory. No transfer of exclusive copyright takes place.

§4 Conclusion of Contract

(1) The contract is concluded by booking via the Provider's website or by acceptance of an individual offer.

(2) By completing the booking, the customer submits a binding offer. The contract takes effect once the Provider confirms the booking in text form.

(3) For individually agreed services, the contract is concluded by the customer's acceptance of the Provider's offer in text form.

(4) The Provider may decline offers and bookings where legitimate grounds exist.

§5 Scope and Performance of Services

(1) Testing is carried out under the PM procedure and the test parameters set out in the current Evaluation Handbook. The test is performed by the Provider. In justified exceptional cases, in particular where a test operation requires specialised technical equipment, the Provider may assign individual test operations to qualified third parties; the evaluation and the certification decision remain with the Provider in all cases.

(2) Test methods may be adapted as the procedure is developed further, provided the essential substance of the service is preserved. The edition of the Evaluation Handbook in force at the time of testing is authoritative.

(3) On completion of the test, the customer receives the test report and the test record; where certification is granted, also the seals booked. Where agreed, materials are additionally provided in translated form.

(4) Where the customer uses evaluation results (such as scores, grades or ratings) in its own communication, these must be identified as results of the PM procedure and the basis of evaluation must be presented in a comprehensible manner.

§6 Publication of the Test Report

(1) The test report is published regardless of the test outcome and remains accessible for the duration of the licence period. Publication forms part of the contractual service and serves the traceability of the procedure.

(2) The customer may withdraw the publication of a test report concerning it at any time in text form. The Provider will then take the report offline within a reasonable period. A seal already issued may not be used after such withdrawal, as the citable source ceases to exist.

(3) The result of a completed test is not altered retroactively. The customer may submit a revised product as a new test sample at any time; the new test constitutes a separate service and results in its own test report.

§7 Rights of Use in the Test Seal

(1) The seals provided are protected by the Provider's copyright. The customer receives a licence limited in time and not transferable. Unless agreed otherwise, the term is one year and renews automatically for one further year unless terminated in text form at least 14 days before expiry.

(2) The permitted scope of use depends on the package booked:

Startup and Business: use on the customer's own website, in online marketplace listings, on product packaging and in print materials.

Premium: additionally, use in international advertising on TV and radio.

(3) The seal must always be used in full and unaltered. Changes to shape, colour, content or language, as well as covering or removing components of the seal, are not permitted.

(4) The seal must be used in a way that keeps the citable source identifiable: the licence number and the reference to the test report must be legible and readily accessible to the viewer. This requirement follows German case law on advertising with test results.

(5) The seal may be used exclusively for the tested product and the results documented in the test report. It extends to product variants that differ from the test sample solely in colour or packaging design, provided material, construction and function remain unchanged. Where changes affect the properties of the product, a new test is required.

(6) Any misleading use, in particular use for products that have not been tested, is prohibited.

§8 Remuneration and Payment Terms

(1) The price list in force applies unless agreed otherwise. All prices are exclusive of statutory VAT.

(2) The invoice amount is due before the performance of services begins. In the event of default, the Provider is entitled to suspend performance.

(3) The customer may choose from the payment methods offered. The Provider may exclude individual payment methods.

(4) In the event of default, statutory default interest applies. A processing fee of EUR 10 may be charged for reminders; the Provider reserves the right to prove higher damages.

(5) Under the Business package, the Provider refunds the testing fee if the product does not reach the certification threshold under §2(2). The refund is made after completion of the test and delivery of the test report. This provision concerns remuneration only; it does not establish any entitlement to a particular test result and has no influence on the conduct or the evaluation of the test. It does not apply to other packages or to additional services under §3.

§9 Customer Obligations

- (1) The customer provides all information and materials required for the test in good time, including the product to be tested in standard retail configuration.
- (2) Test samples remain with the Provider after completion of the test and are not returned. This serves the traceability of the test result and rules out any subsequent alteration of the tested sample. Any deviating arrangement requires text form prior to conclusion of the contract.
- (3) The shipping address is communicated after conclusion of the contract. Shipment to the address stated in the imprint is not provided for.
- (4) Where testing is delayed by late or incomplete provision of materials, the applicable periods are extended accordingly.

§10 Termination and Consequences

- (1) On expiry of the licence, the right to use the test seal ceases. The customer discontinues use without delay and removes the seal from all media, marketing materials and packaging.
- (2) If the seal continues to be used after expiry of the licence or outside the agreed scope of use, the Provider may claim a contractual penalty amounting to 150 per cent of the agreed annual licence fee. This provision safeguards the meaning of the seal towards consumers and thereby its value for all licensees. Further claims remain unaffected.

§11 Liability

- (1) The Provider is liable for intent and gross negligence.
- (2) In cases of slight negligence, the Provider is liable only for breaches of material contractual obligations (cardinal obligations), limited to the foreseeable damage typical of the contract.
- (3) These limitations do not apply to damage to life, body or health, nor to claims under the German Product Liability Act.
- (4) The Provider is not liable in cases of force majeure (natural disasters, war, pandemics, official orders). The Provider will inform the customer without delay of such events and their effects.

§12 Warranty and Acceptance

- (1) The Provider warrants that services will be rendered in accordance with the contract. Defects must be reported without delay in text form; the Provider must be granted a reasonable period for remedy.
- (2) The customer shall examine the services provided without delay and report any defects within seven days. If no objection is raised within this period, the service is deemed accepted. Latent defects may also be asserted at a later date.
- (3) Notices of defect concern the proper conduct of the procedure and the completeness and accuracy of the documentation. The test result itself, as an expert evaluation under the disclosed procedure, is not subject to warranty.

§13 Data Protection

- (1) The Provider processes the customer's personal data in accordance with the GDPR and the German Federal Data Protection Act. Details are set out in the privacy policy available on the website.
- (2) The customer has the right to information, rectification, erasure or restriction of processing, unless statutory retention obligations apply.

§14 Amendments to the GTC

- (1) The Provider may amend these GTC where this is necessary due to statutory requirements, technical changes or other compelling reasons.
- (2) Amendments are communicated to the customer in text form at least 14 days before they take effect. They are deemed accepted if the customer does not object within this period; this consequence will be pointed out separately in the notification.

§15 Final Provisions

- (1) German law applies, excluding the UN Convention on Contracts for the International Sale of Goods. For customers outside the EU, German law applies exclusively. For cross-border transactions within the EU, the Unfair Commercial Practices Directive (2005/29/EC) applies in addition. The place of jurisdiction is Frankfurt am Main, to the extent legally permissible.
- (2) Should individual provisions of these GTC be invalid, the validity of the remaining provisions is unaffected. The invalid provision is replaced by a rule that comes closest to its economic purpose.