

General Terms and Conditions for Performance Marketing ZweiPunkt GmbH

§ 1 General, Scope of Application, Deviating Conditions

(1) These General Terms and Conditions for Search Engine Marketing (SEO, SEA) and Affiliate Marketing (hereinafter referred to as „GTC“) of ZweiPunkt GmbH (hereinafter referred to as „Contractor“) apply only to businesses (hereinafter referred to as „Client“) according to § 14 of the German Civil Code (Bürgerliches Gesetzbuch), i.e. Clients who, at the time of conclusion of the legal transaction, are acting in the exercise of their commercial or self-employed professional activities.

(2) These GTC apply exclusively to the business relationship between ZweiPunkt GmbH and the Client, including provision of information and consulting. If the GTC have been included into business with a Client, they will also apply to all further business relations between ZweiPunkt GmbH and the Client, unless expressly agreed upon otherwise in writing.

(3) Deviating general terms and conditions of the Client will only apply if and to the extent ZweiPunkt GmbH expressly acknowledges them in writing. ZweiPunkt's silence in particular does not amount to acknowledgement or consent regarding deviating terms and conditions; this also applies to all future contracts.

(4) Amendments to these GTC will become effective and part of the contract if the amendments have been made available to the Client in writing and the Client has not objected to the amendments in writing within one month after receipt. ZweiPunkt must expressly point out this legal consequence in its letter sending the amended GTC. In the event of an objection by the Client, the GTCs on which the contract was based up to that point will remain valid.

§ 2 Conclusion of Contract, Scope of Services

(1) The services to be provided by ZweiPunkt GmbH in each case - including Search Engine Optimizing (SEO), Search Engine Advertising (SEA), Google Analytics, Double Click, Affiliate Marketing, etc. - are derived from the quotes from ZweiPunkt GmbH on which the contract is based, which contains a detailed description of services as well as, if applicable, appendixes and guidelines. The content of the contract is therefore derived from ZweiPunkt GmbH's quote unless expressly agreed upon otherwise in writing. Appendixes to the quote will be delivered to the Client together with the quote. A contract is concluded when the Client approves the quote.

(2) The measures ZweiPunkt takes in the services provided are intended for the provision of the service/activity e.g. increasing the ranking of the Client's website in the search results, improving their market presence, placing and linking of advertisements etc. ZweiPunkt does not, however, promise success for the above-mentioned reasons.

(3) ZweiPunkt GmbH is authorized to use other affiliated ZweiPunkt GmbH companies pursuant to § 15 et seq. AktG (German Stock Corporation Act) as well as sub-contractors (e.g. media agencies) for the fulfillment of its services at any time.

§ 3 Duties and Obligations of the Client

(1) The Client is always obligated to cooperate as required so that ZweiPunkt can provide the services they owe. In particular, the Client must provide all necessary documents, access data and/or information required for the performance of the services by ZweiPunkt (such as (keywords, ad texts, etc.) without being requested to do so and in a timely manner.

(2) The Client must ensure that its website and the advertisement to be placed by ZweiPunkt GmbH comply with the applicable legal provisions, in particular they do not violate any third-party rights. In particular, the Client may only use keywords and trademarks that he is entitled to use and that do not violate the rights of third parties. ZweiPunkt will not perform a legal review of proposed keywords, trademarks or websites, in particular regarding trademark risks. Notes from the Client, however, to block certain keywords must be observed.

(3) The Client will also ensure that its website is regularly accessible and that any access data required by the Contractor for the provision of the services is not changed without notice. If the website is inaccessible, it can have a negative effect on the optimization measures.

(4) For tracking services, ZweiPunkt recommends that the Client permanently integrate tracking scripts recommended by ZweiPunkt into their website. The Client, however, is responsible for the specific use and the type / extent of script use.

(5) In the event of a breach of the aforementioned duties and obligations, the Client is obliged to indemnify ZweiPunkt from any resulting damages and claims of third parties.

§ 4 Leistungstermine, Verzug

(1) Verbindliche Termine und Fristen zur Erbringung der Leistungen müssen ausdrücklich und schriftlich vereinbart werden. Bei unverbindlichen oder ungefähren Terminen und Fristen (ca., etwa etc.) bemüht sich ZweiPunkt, diese nach besten Kräfte einzuhalten.

(2) Ein Fixgeschäft liegt nur dann vor, wenn ZweiPunkt ein solches ausdrücklich schriftlich bestätigt hat oder die rechtlichen Voraussetzungen für ein Fixgeschäft gegeben sind.

(3) Gerät ZweiPunkt mit der Erbringung der Leistungen in Verzug, muss der Kunde der ZweiPunkt zunächst eine angemessene Nachfrist von mindestens - soweit nicht im Einzelfall unangemessen - 14 Tagen zur Leistung setzen.

§ 5 Force Majeure and Other Impediments

(1) In the case of force majeure ZweiPunkt will inform the Clients in good time in writing. In this case ZweiPunkt is entitled to postpone provision of the services for the duration of the impediment or to withdraw from the contract in whole or in part on account of the part of the contract not yet fulfilled, as long as ZweiPunkt has complied with the aforementioned duty to inform. Force majeure will be deemed to include strikes, lockouts, official interventions, shortages of energy and raw materials, transport bottlenecks for which ZweiPunkt is not responsible, operational hindrances for which ZweiPunkt is not responsible - e.g. due to fire, water and machine damage - and all other hindrances which, when viewed objectively, have not been culpably caused by ZweiPunkt.

(2) If a date or a deadline for a services has been bindingly agreed upon and if this date or deadline is delayed due to events pursuant to § 5 (1), the Client will be entitled to withdraw from the contract after a reasonable grace period waiting for the services not yet performed, if it objectively unreasonable for them to continue to adhere to the contract. Any further claims by the Client, in particular claims for damages, are excluded.

§ 6 Use of ZweiPunkt GmbH Services

(1) Insofar as the granting of rights of use is the subject of the contracted service, the Client has simple, non-exclusive rights to use the services. The Client may only use the service scope as agreed upon in the contract.

(2) Direct or indirect use of the services provided by ZweiPunkt by third parties is only permitted with the express written consent of ZweiPunkt. „Third parties“ within the meaning of this provision also include subsidiaries as defined by § 15 of the German Stock Corporation Act or other companies affiliated with the Client or shareholders.

§ 7 Payment Terms

(1) Unless otherwise agreed upon, the services rendered by ZweiPunkt will be invoiced to the Client monthly - on an hourly, daily or flat-rate basis, depending on the offer.

(2) For affiliate marketing, ZweiPunkt may also be remunerated on the basis of a percentage of the Client's sales. In this case, the Client is obliged to inform the Contractor of the corresponding sales figures on a monthly basis.

(3) ZweiPunkt invoices (net plus the current applicable value added tax) are due within 10 days of the invoice date. The payment date is the date on which ZweiPunkt received the payment or the date on which the bank account is credited. If agreed upon, ZweiPunkt is entitled to invoice the Client for commissioned services on a quarterly basis in advance. The payment period pursuant to sentence 1 above will then apply accordingly.

(4) ZweiPunkt reserves the right, contrary to the aforementioned terms of payment pursuant to § 7 (3), to invoice the Client separately for services or service phases immediately with an immediate due date.

(5) The items delivered by ZweiPunkt in connection with the services rendered remain the property of ZweiPunkt until all claims arising from the business relationship with the Client have been settled in full.

(6) If the Client defaults on payment, ZweiPunkt is entitled - while reserving the right to claim further damages - to charge default interest in the amount of 9% above the base interest rate applicable at the time the payment claim becomes due.

§ 8 Aufrechnungs- und Zurückbehaltungsrecht

(1) Ein Zurückbehaltungs- oder Aufrechnungsrecht des Kunden besteht nur hinsichtlich solcher Gegenansprüche, die nicht bestritten oder rechtskräftig festgestellt sind.

(2) Ein Zurückbehaltungsrecht kann vom Kunden nur insoweit ausgeübt werden, als sein Gegenanspruch auf dem gleichen Vertragsverhältnis beruht.

§ 9 Notice of Defect, Warranty, Breach of Duty

(1) The Client must give notice of any noticeable defects in ZweiPunkt's services without delay, but no later than 7 days after performance of the service. Notices of defects must include a detailed description of the defect. Failure to give notice of defects in due time will exclude any claim of the Client for breach of duty due to poor performance.

(2) Latent defects must be reported immediately after they become apparent, at the latest within the statutory limitation period. Complaints must include a detailed description of the defect. Failure to give notice of defects in due time will also exclude any claim of the Client for breach of duty due to poor performance.

(3) Notices of defects must be made in writing. Failure to give notice of defects in writing will also exclude any claim of the Client for breach of duty due to poor performance.

(4) ZweiPunkt will provide warranty for verifiable defects for a period of one year, calculated from the date of the statutory commencement of the liability period. This does not apply if ZweiPunkt is guilty of malice, gross negligence or intent.

(5) The above limited liability period will also apply to competing claims in tort and to any claims arising from the consequences of defects.

(6) Further claims of the Client due to or in connection with defects or consequential damages caused by a defect, irrespective of the reason, are only valid in accordance with the provisions in § 10.

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§ 10 Liability, Limitation of Liability

(1) ZweiPunkt GmbH is liable only for its own willful intent and gross negligence and willful intent and gross negligence by its legal representatives and agents. Liability by ZweiPunkt and its legal representatives and agents is therefore excluded, unless it concerns

(a) breach of essential contractual obligations, i.e. those whose fulfillment are inherent to the contract and on which the Client may rely,

(b) breach of obligations according to § 241 para. 2 BGB, if the Client can no longer be reasonably expected to accept the services of ZWEIPUNKT GMBH,

(c) injury to life, body and health,

(d) a guarantee for the quality of a service or for the successful completion of a service,

(e) fraud or other cases of mandatory legal liability.

(2) Unless ZweiPunkt can be accused of an intentional breach of duty or in the event of injury to life, limb or health or other cases of mandatory statutory liability, ZweiPunkt GmbH will only be liable for typical and foreseeable damage.

(3) ZweiPunkt's liability is, with the exception of the cases pursuant to § 10 para. 1 (a) to (e) above, limited to a maximum liability of EUR 25,000 for each individual contract.

(4) Any further liability for damages other than those provided for in the above clauses will be excluded - regardless of the legal nature of the asserted claim. This applies in particular to claims for damages arising from culpa in contrahendo, other breaches of duty or claims in tort for compensation for material damage pursuant to § 823 BGB.

(5) The exclusions and limitations of liability pursuant to § 10 (1) - (4) above will apply to the same extent to executive and non-executive employees and other agents as well as sub-contractors.

(6) Claims by the Client for damages arising from this contractual relationship may only be asserted within a deadline of one year from the start of the statutory limitation period. This does not apply if ZweiPunkt is guilty of malice, intent or gross negligence or in the case of a claim based on a tortious act.

(7) A reversal of the burden of proof is not associated with the above provisions.

§ 11 Privacy, Data Protection

(1) The Parties commit themselves to maintain the confidentiality of facts, documents and information which come to their knowledge in the course of carrying out the contractual agreement and contain technical, financial, business-related or market-related information about the other Party's company, provided that the respective information is designated as confidential or there is an obvious interest in keeping it confidential (hereinafter referred to as Confidential Information).

(2) Both Parties commit to using the Confidential Information exclusively for the purpose of the implementation and execution of the contractual relationship and its individual contracts.

(3) The obligation to maintain secrecy pursuant to § 12 (1) above will not apply if the respective confidential information was already generally accessible at the time it was obtained or becomes generally accessible later or was already known to the respective party or had to be disclosed due to a mandatory legal obligation, court decision or order of an authority or a supervisory body.

(4) ZweiPunkt will collect, process and use all information containing personal data that it receives for carrying out the contractual agreement within the framework of the German Federal Data Protection Act (BDSG) in its currently valid version;

§ 12 Termination / Duration

(1) Contracts for which no notice period has been agreed upon and contracts concluded for an indefinite period may be terminated with one month's notice to the end of the month. In all other cases Duration as per ZweiPunkt's offer will apply.

(2) The right to terminate the contract without notice for good cause remains in effect for both Parties. In particular, ZweiPunkt is entitled to terminate the contract without notice for good cause if the Client is in default of payment for the services already invoiced, in whole or in part, and the total amount due is more than 10% of the agreed total remuneration.

(3) Any termination must be in writing.

§ 13 Written Form

All agreements, ancillary agreements, assurances and amendments to the contract must be in writing. This also applies to the waiver of the written form agreement itself. Verbal amendments or additions to the contract will be null and void. The priority of an individual agreement (§ 305 b BGB) remains unaffected.

§ 14 Final Provisions

(1) The place of performance for this contract is ZweiPunkt GmbH's registered office.

(2) The exclusive place of jurisdiction for all disputes arising between the Parties is ZweiPunkt's registered office. ZweiPunkt GmbH is, however, also entitled to sue the Client at their general place of jurisdiction.

(3) German law will apply exclusively, under the exclusion of the CISG (UN Convention on Contracts for the International Sale of Goods).

(4) The transfer of rights and obligations of the Client arising from the contractual agreement with ZweiPunkt requires the written consent of ZweiPunkt.

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