

Terms and Conditions

bms GmbH, Landsberger Str. 487 , 81241 München

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These General Terms and Conditions have been produced on the basis of the Terms and Conditions recommended by the ADM (Arbeitskreis Deutscher Marktforschungsinstitute e.V) and correspond to the requirements of the International Code of Practice for Market and Social Research published by the ICC (International Chamber of Commerce) and ESOMAR (European Society for Opinion and Marketing Research).

1. The institute operates only on basis on following list of Terms and Conditions. Deviations from these General Terms and Conditions set down here are only effective if agreed in writing by the parties.

2. bms conducts its activities in the sense of advisory services in accordance with the acknowledged rules of the profession.

3. bms submits a tender to a prospective client that is essentially in the form of a project proposal stating the task, the project concept, and aspects of the evaluation, together with the fee demanded and the time required for the project. The prospective client receives the project proposal for the sole purpose of deciding where to award the contract for the project that has been put out to tender. Unless otherwise agreed, its contents may only be wholly or partially made public or passed on to a third party with mutual consent. Should a tender exceed the scope of a framework proposal without the prospective client having determined the scope of the tender, bms will inform the prospective client before submitting the tender of the extent to which it considers it necessary to draw up specific project documents such as draft questionnaires or exploration guidelines, and what fee this will incur. bms will only prepare a corresponding tender if there is written agreement with the prospective client relating to the input required and the fee that is to be paid for this. Unless otherwise agreed in individual cases, the prospective client must reimburse any costs incurred for meetings outside bms's place of business. To this end, bms will inform the prospective client about the anticipated amount of these costs before arranging a binding appointment; the prospective client must confirm the date and responsibility for these costs in writing.

4. The fee named in the tender essentially comprises all the services to be provided by bms in connection with the carrying out of the commission. Should the client have any special requests, or require the provision of additional copies of reports, translations of project reports, or preliminary or interim reports, bms may demand an additional fee that is agreed separately prior to the carrying out of such additional services. Additional costs arising after conclusion of the contract, and which are due to changes or additional services requested by the client, may be invoiced separately by bms. This also applies if such additional costs are due to other reasons for which bms is not responsible. Changes to the volume of work commissioned after conclusion of the contract moreover require express written agreement between the parties, including a corresponding agreement concerning appropriate adjustments to the fee as well as to the completion deadline for the services owed by bms.

5. bms is generally unable to guarantee exclusiveness in relation to certain product fields or research objects or methods. If exclusiveness is agreed in justifiable exceptional cases, its duration and any additional fee incurred must be established.

6. The client receives the project proposals and project reports solely for their own use. Unless otherwise agreed, prior written approval must be obtained from bms before their content is wholly or partially made public, passed on to a third party, or for this purpose copied, printed, or stored and processed in information and archiving systems.

7. All the rights vested in bms in accordance with copyright law will remain with bms. The right of ownership and copyright to the research concept and materials accrued while carrying out the commission (data carriers such as questionnaires) rests with bms. The client's copyright vis-à-vis the documents they have produced remains unaffected.

8. The client can agree with bms that they will receive two sets of data in return for a fee.

9. bms is entitled to draw upon scientific or methodological experiences gained in the course of studies for the purpose of pure research. Any possible publication must not contain the client's name or other indications revealing the client's name and circumstances.

10. If the client is to participate in the project, and check its execution and results, this requires separate agreement. However, any such agreement must not jeopardize the anonymity of respondents. If measures become necessary in this context so as to protect anonymity, thereby incurring costs, the latter must be born by the client.

11. bms is obliged to keep data collection documents for a period of one year and data carriers for a period of two years following delivery of the project report, unless expressly agreed otherwise.

12. bms is obliged to treat all the information received from the client in the strictest confidence, and to use it exclusively for the purposes of carrying out the commission. Unless otherwise agreed, the results that have been obtained are only made available to the respective client.

13. bms guarantees the proper execution and evaluation of the project. If results are not supplied on time for reasons for which bms bears responsibility, the client may set an appropriate time limit with a threat of refusal to accept performance. Once this time limit has expired, the client can withdraw from the contract inasmuch as the service set down in the commission has not yet been provided. If it can be proven that the client no longer has an interest in that part of the work that has already been supplied, they are also entitled to withdraw from the contract in this respect. If the project has culpably not been carried out in accordance with the commission, the client can demand redress. If such redress fails or is delayed by bms, the client can demand an appropriate price reduction or cancellation of the contract.

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14. bms is only liable for any claims for default prior to or at conclusion of the contract, as well as for all claims resulting from or in connection with the contract between the parties, regardless of the basis for these claims (such as non-fulfilment, impossibility of fulfilment, delay, positive infringement of the contract, unlawful act) in the case of deliberate or grossly negligent behaviour on the part of bms or its staff. bms is only liable for ordinary negligence if it infringes contractual obligations. bms is not liable for subsequent damage or injury of any kind arising for the client in connection with the project carried out for them. If damage or injury is caused negligently by bms, its liability is limited to typical damage/injury of the sort that was reasonably foreseeable for bms at the time when the contract was concluded, as well as to the scope of damage/injury usually arising in comparable cases.

15. Regardless of any default, the client is liable for any direct or indirect damage/injury to bms or a third party resulting from the use of products provided by the client.

16. The fees agreed serve to fund the respective project. For this reason, unless otherwise agreed in writing, pre-payment is required: 50% when the contract is awarded, and 50% when the results are delivered. All amounts invoiced are due for payment within 14 days of the issuing of the invoice. If payment is delayed, bms will invoice the client for interest amounting to 5% over the base interest rate, in accordance with §1 of the "Minimum Lending Rate Transfer Act" (*Diskontsatz-Überleitungsgesetz*). The client as no fundamental right to offset this with invoices that are due unless the counterclaim asserted by the client is undisputed or legally established. The client can only assert a right to withhold due invoiced amounts if this right is based upon undisputed or legally established claims. Any assignment to a third party of claims regarding bms is excluded.

17. The place of performance for all those services to be provided by bms is Munich. The court of jurisdiction for all claims made in connection with the contract between the parties or its execution is Munich, so long as the client is a businessperson, a legal entity within a public body, or a special fund in the public sector.

18. In the event that individual provisions are or become ineffective, this does not affect the validity of the remaining provisions. Ineffective provisions will be replaced by regulations whose economic outcome corresponds as closely as possible to what was intended by the ineffective clause.