
General Terms and Conditions

As at: 05.08.2013

§ 1 General terms, scope

a. The following General Terms and Conditions (GTC) apply to all business relations between Second Elements GmbH & Co. KG, owner: Daniel Pieper, Planckstrasse 13, 22765 Hamburg (hereinafter referred to as "Second Elements") and its contractual partners (hereinafter referred to as "Customer"). These GTC also apply to future business relationships, even if they have not been expressly agreed upon once again. The most recent version of the GTC valid at the time of the conclusion of the contract is authoritative.

b. Deviating, opposing or supplementary GTC shall not become a contract component - even if Second Elements is aware of these - unless their validity is explicitly consented to in writing by Second Elements.

§ 2 Objective of the company

Second Elements is a service provider in the field of online marketing and offers its customers various products in this field, in particular search engine optimization and the management of campaigns with Google AdWords and Conversion Optimisation.

§ 3 Conclusion of the contract

A contract between Second Elements and the Customer is concluded upon receipt of the previously provided order confirmation signed by the Customer.

§ 4 Scope of services, fees, term and termination

a. The exact scope of the services delegated to Second Elements by the Customer, the incidental fees for this purpose, the reporting information, the due dates, the term and the right to terminate the contractual relationship are regulated in detail in the respective order confirmation (cf. § 3).

b. Second Elements has the right of retention in the event of a default in payment on the part of the Customer until full settlement of any and all its outstanding claims.

§ 5 Changes to Customer data, access protection

a. If the contact details specified by the Customer change after conclusion of the contract, the Customer is obliged to inform Second Elements of this change immediately in writing.

b. Second Elements may fulfil its obligations to provide information, in particular as regards invoices, payment reminders or changes to the GTC by sending emails to the email address provided by the Customer. The Customer is also responsible for configuring the existing filter systems on the client and/or provider side (e.g. firewalls, virus and spam filters) in such a way, so as to ensure the receipt of emails from Second Elements at all times.

§ 6 Forbidden content, exemption

a. The Customer expressly declares to Second Elements that its website to be used for advertising purposes by Second Elements and the content, products, etc. available there, as well as any specified search terms do not violate third party rights (e.g. copyrights or trademark rights), statutory provisions (e.g. penal laws or regulations concerning the protection of minors) or moral standards (e.g. obscene, defamatory, xenophobic content). The Customer is solely responsible for checking the legal harmlessness of the aforementioned.

Furthermore, the Customer expressly declares that the terms and brands mentioned on its website may be used for search engine optimisation, advertising (Google Adwords) and as part of conversion optimisation, unless the Customer informs Second Elements of possible restrictions in advance.

b. In the event of a breach of the above item a. or sufficient suspicion of such a breach, Second Elements is entitled to:

- warn the Customer
- temporarily terminate the services until such time as the injury has been clarified and eliminated
- permanently discontinue the services and terminate the contractual relationship without notice

Second Elements reserves the right to choose the corrective measure.

c. The Customer releases Second Elements from any and all claims made by third parties against Second Elements due to any injury - be it intentional or negligent - of their rights pursuant to item a) above. The Customer has to assume the costs borne by Second Elements for the necessary legal defence during the ongoing legal process at the request of Second Elements, or to at least fully reimburse these costs upon conclusion of this matter, provided that it is responsible for the infringement. Where necessary, possible and permitted by law, the Customer is also obliged to provide Second Elements with information and documentation necessary for the appropriate legal defence.

§ 7 Press releases

Second Elements will prepare and distribute online press releases as a means of generating links. These will be posted on press portals. The Customer will define topics and content in advance, either by accepting proposals from Second Elements or by providing their own requirements for topics. Once the Customer has accepted the press release created or revised by Second Elements via email, the last version of this press release is deemed to have been released for publication. The Customer of Second Elements is responsible for the press release's contents. The publishing of the press release on the part of PR portals is outside the influence of Second Elements. There is no guarantee that this press release will be published.

§ 8 Limitation of liability

a. Second Elements is liable for damage caused deliberately or in gross negligence, for claims according to the Product Liability Act and for injury to life, limb or health in accordance with statutory provisions.

b. For damages caused by gross negligence, the liability of Second Elements to replace the Customer's contractual damage immediately foreseeable upon conclusion of the contract shall be limited, provided that the damage was not caused by executive employees or legal representatives from Second Elements. The liability of Second Elements is unlimited in such a case.

c. In the event of simple negligence on the part of Second Elements or its vicarious agents, Second Elements shall only be liable if an essential contractual obligation (cardinal obligation) has been violated. In such cases, the liability shall be limited to the Customer's contractual damage immediately foreseeable upon conclusion of the contract. This also applies to breaches of duty by the legal representatives and/or vicarious agents from Second Elements.

d. Insofar as the liability of Second Elements is limited or excluded by the aforementioned provisions, this shall also apply to the liability of its legal representatives and/or vicarious agents.

e. The Customer has been made aware that search engine optimisation and advertising management is, in principle, also dependent on factors that cannot be influenced by service providers in the field of search engine marketing. For this reason, a guarantee for an improvement in the positioning/results can neither be given, nor can liability be assumed for a possible deterioration of the positioning/results. The assertion of any claims for damages in this respect is excluded.

f. Reference is expressly made to the fact that Second Elements will take action independently as part of the search engine optimisation in order to provide links on the Customer website to third-party websites. These measures for the generation of links include, but are not limited to, entries in web catalogues, forums and blogs. In this context, third parties (such as journalists, editors, bloggers and forum users) or Second Elements create descriptions, comments or articles, the content of which may refer to the branch, the services and products, as well as the Customer's website. An unfavourable opinion both with regard to the Customers in general as well in the specific case of the Customer's offers is excluded in the process. Furthermore, however, Second Elements only has limited influence on design, content and style of the content created by third parties.

The Customer expressly declares its consent to the acceptance of the existing terms and conditions with the foregoing procedure and authorises Second Elements to apply the corresponding measures independently in this respect.

§ 9 Data processing and protection

a. The Customer agrees that Second Elements processes and uses the Customer's personal as well as content, login, invoicing, web analytics and eCommerce data in connection with the provision of services. Second Elements shall store the data in accordance with statutory data protection provisions. To the extent necessary for contract execution, Second Elements may pass on Customer data to third parties involved or allow these data to be captured directly by third parties. The disclosure of data for other purposes is prohibited and requires the Customer's special consent.

b. Second Elements shall prepare regular reports to evaluate the results of search engine marketing activities. Reports, in particular in the area of Google AdWords management, can be wholly or partially based on the data of the Customer's Google Analytics account.

c. Second Elements supports its Customers as part of its advisory services in the establishment of visitor evaluation software and service providers such as the service provider report in Google Analytics. This advisory service expressly includes no legal aspects.

In terms of the use of such visitor evaluation, the Customer bears sole responsibility for the integration of any privacy policy necessary on its website that meets its country's legal requirements. The Customer is solely responsible for gathering information about the terms and conditions, privacy policy and privacy preferences of third party providers used, such as, for example, Google Analytics, and evaluating and legally complying with the legal aspects of data protection. Second Elements is prohibited by law to provide legal advisory services.

§ 10 Other provisions, severability clause

a. The laws of the Federal Republic of Germany shall apply exclusively.

b. Changes and/or additions to these GTC are to be communicated to the Customer in writing. They shall be deemed approved by the Customer, if the Customer does not raise any objections in writing within a period of one month. The Customer must expressly refer to this legal consequence in the notification of change.

c. Should individual provisions of these GTC be or become invalid in whole or in part, the validity of the remaining provisions shall not be affected. The invalid term or provision shall be replaced by a valid term or provision whose economic purpose comes as close as possible to that of the invalid provision in a legally permissible manner. The same applies to the closing of any gaps in these terms and conditions.

d. Unless otherwise prohibited by law, Hamburg is deemed to be the exclusive place of jurisdiction between the respective Customer and Second Elements.