

# orbiz Software GmbH

## Special Terms of Use for the service “2ask”

### Preamble

orbiz Software GmbH - designated as "orbiz" in the following - operates the service 2ask. The service 2ask is a web-based service which enables the orbiz customer - designated as the "customer" in the following - to create and carry out Internet-based online surveys.

### Subject of the Conditions

orbiz provides its service solely on the basis of these conditions - regardless whether it is free of charge or subject to charge. Other General and Special Terms and Conditions from orbiz and the customer do not apply.

## § 1 Beginning of Contract and Contract Requirements

- (1) The use of the service requires the customer to register in advance with 2ask. orbiz reserves the right to reject the completion of a contract in individual cases.
- (2) The contract does not come into force until confirmed by orbiz, generally via email.
- (3) If no royalty is intended for the rate selected by the customer, the customer may use the service according to the specification of services / price list after receiving confirmation from orbiz.
- (4) If a royalty applies to the rate selected by the customer, the customer may partially use the service after receiving the confirmation from orbiz (entering the questionnaire and address data as well as conducting the survey). However, it is not possible to call up the results of the survey until the customer has paid the royalty agreed on for the service.
- (5) If the package chosen by the customer is part of the support program for study and research, the customer can be asked to give proof of his or her affiliation to a study or research program (e.g. confirmation of enrollment). Eligible for the use of such packages are teachers, professors, research and teaching assistants and students at state owned or state recognized schools, colleges and universities as long as the package is not used for commercial purpose.

## § 2 Specification of services

- (1) The customer obtains the right to use the service according to his/her selected rate in conjunction with the specification of services / price list in compliance with the respective technical and operational possibilities. The exact scope of services is based on the specification of services, price list as well as any potential supplementary conditions and special agreements and these stipulations. The customer has the right to use the services defined in the specification of services during the duration of the respective contract year. It is not possible to carry over individual or entire non-used parts of the service, such as non-used surveys and participants into the following contract year. This also holds for the subscription payment scheme.
- (2) The design, structure, and scope of the functions of the service, in particular the visual presentation of the content, are solely at the discretion of orbiz. The customer is not entitled to exert influence on this, unless a different agreement has been reached, e.g. in the specification of services. orbiz is authorized to put its insignia on the services as well as the questionnaires created or mark them with other notices and advertisements. It is only possible to replace or remove these when booking the individual payment rate.

### **§ 3 Hardware and software requirements**

The hardware and software requirements are based on the specification of services and price list.

### **§ 4 Obligations of the user**

- (1) The customer is not permitted to make his/her user account accessible to third parties.
- (2) The customer must keep his/her access data and personal password in a safe place to prevent third party access.
- (3) The customer must change the password in regular intervals for security reasons. He/she may change the password online anytime. If the customer suspects that a third party has knowledge of the password, he/she must change it immediately.
- (4) If orbiz has a reasonable suspicion that the customer's access data have been used without authorization by a third party, orbiz has the right to block his/her access. In such cases, the customer will be provided new access data by orbiz.
- (5) According to paragraphs (1) - (4), the term third party does not pertain to co-workers of customers, who are corporate bodies or public facilities. However, in such cases the customer must be aware that only co-workers who are needed to carry out the customer's tasks gain knowledge of the access data. Partners of orbiz, who have completed a relevant written partner contract, may also make orbiz services available to this third party, as long as the partner books the service on his/her behalf or books services for a third party. The partner must make sure that the third party only uses the service in compliance with the agreed conditions, in particular those stipulated here and the specification of services.
- (6) The customer may only use the service for its intended purpose - conducting surveys - and not in any other unconventional matter. Above all, he/she may not abuse the service, e.g. to send advertisement emails (spamming) or junk mails.
- (7) The customer pledges not to publish any content which could become a public nuisance and offend against common decency. In particular, he/she pledges not to add any sexually offensive, racist, radical and inhuman or contemptuous content.
- (8) The customer must immediately notify orbiz of any changes of data relevant to orbiz, such as changes to his/her address, power of representation, and other incidents.
- (9) If the customer violates his/her obligations, orbiz has the right to remove the content from the Internet without a warning and at the expense of the customer and terminate the contract without previous notice.
- (10) The customer must make sure that the infrastructure of the service is not overcharged by excessive usage. Excessive usage generally occurs when more than 1000 surveys are accessed per day by the customer.

### **§ 5 Compensation**

The customer can only demand compensation from orbiz on the basis of indisputable or legally established customer claims towards orbiz.

### **§ 6 Extension / Termination of Contract**

- (1) The duration of the contract is based on the specification of services and price list in conjunction with the payment rate selected by the customer.
- (2) Contracts with a fixed duration are not extended automatically. Contracts with a duration that has been specifically agreed on by both parties cannot be terminated prematurely.
- (3) Contracts with an extension option (subscription) are continually extended by one year, as long as one of the contracting parties has not terminated the contract at the latest one month before the end of the contract duration. If a minimal duration of contract has been agreed on,

the contract cannot be terminated until the end of the minimal duration of contract with one month prior notice.

- (4) Contracts without a fixed duration can be terminated with three months prior notice at the end of the contract duration on a quarter-year basis. If a minimum duration of contract has been agreed on, the contract cannot be terminated until the end of the minimum duration with three months prior notice as well.
- (5) The contract must be terminated in writing - by fax or letter.
- (6) Both parties reserve the right to extraordinary notice of cancellation. In either case, orbiz has a right to extraordinary notice of cancellation, if the customer violates these conditions or other application conditions of use from orbiz.
- (7) orbiz is authorized to discontinue services for which the customer does not pay a user fee anytime without prior notice or offer such services for a fee.

## **§ 7 Deleting questionnaires, addresses, survey results, etc.**

- (1) The customer may delete his/her questionnaires, addresses, and survey results at any time using his/her access data provided by orbiz.
- (2) Thirty days after the expiration of the contract, orbiz has the right to irrevocably delete all data provided by the customer, including the questionnaires, survey participants and survey results without prior notification.

## **§ 8 Data protection**

- (1) orbiz pledges not to use the survey results of the customer or make them available to a third party in any way.
- (2) orbiz reserves the right to compile, save (electronically as well) and use personal and business-related data from the customer without any further consent for the purpose of the service, e.g. allocation, use, evaluation of data and for accounting purposes. The data may also be used internally within the firm and transmitted to other firms/partners authorized by orbiz in order to implement the contract, for the use of a hotline for technical support, in particular, as well as for accounting purposes.
- (3) The customer must respect legal regulations while designing the questionnaires and carrying out the surveys.

## **§ 9 Availability, data storage and support**

- (1) orbiz generally provides the service without interruptions. However, orbiz cannot guarantee that the service is continuously available and functions without restrictions. It also cannot be ruled out that delays and interferences take place while providing the services due to incidents and circumstances which are beyond the influence of orbiz, e.g. availability of the World Wide Web.
- (2) Disruptions for which orbiz is not liable as well as disruptions due to maintenance work, etc. do not lead to a right to cancel or claims for damage on behalf of the customer.
- (3) orbiz secures the data as follows: once per night. The customer is obligated to regularly save all questionnaires, address indexes and survey results created by him/her and in appropriate time intervals by downloading them.
- (4) orbiz reminds the customer that data can be lost even when saved properly. The customer is thus obligated to regularly save data such as survey results and addresses by downloading them.
- (5) Orbiz' scope of services does not provide support for this because it is self-explanatory and context-specific assistance is available online.

## § 10 Guarantee

- (1) During the duration of the contract orbiz guarantees that the service provided by orbiz fulfils the functions agreed upon. However, a prerequisite for the guarantee is that the service is used in compliance with the contract.
- (2) If reproducible errors occur during the guarantee period, the customer must notify orbiz of the observed malfunctions in writing and precisely specify the defective parts of the service and orbiz will correct the malfunctions. The specifications on the troubleshooting list, which orbiz provides the customer via email when necessary, must be taken into account. On request, the customer must also provide orbiz the data he/she has used which have led to the malfunction and cooperate adequately with orbiz in analyzing and correcting the malfunction free of charge in compliance with the contract. orbiz may correct the malfunction the way in which it deems appropriate.
- (3) The contracting parties agree that even with state-of-the-art technology it is not possible to create software that works faultlessly under all conditions of application. The customer can inquire on the homepage of the service which browser and operating systems the service has been optimized for at a given point in time. No guarantee can be made to the customer that the service will function with other browsers and operating systems. orbiz has the right to modify these system requirements without notification. These modifications do not substantiate a reason for cancellation.
- (4) The customer is not entitled to have an error corrected when the error is not reproducible or cannot be displayed as automated data. Moreover, the guarantee does not apply in cases in which it cannot be proven that orbiz is liable for a certain malfunction. Minor errors which do not or only insignificantly impair the usability of the service do not have to be corrected by orbiz. Such minor errors also do not substantiate a reduction of the user fee or a withdrawal from the contract.
- (5) If expenditures arise due to the notification of defects, which are not based on malfunctions in the services provided by orbiz, the customer will compensate orbiz for the resulting costs on a time and material basis in accordance with the currently valid price list from orbiz.
- (6) In the case of a guarantee or liability claim to orbiz, the contributory negligence of the customer must be considered accordingly, in particular in the case of insufficient problem reports or insufficient data storage.
- (7) orbiz must correct errors within an appropriate timeframe after having received the written error report.
- (8) If orbiz does not correct significant errors within an appropriate timeframe after having received a written error report, the customer can set an appropriate additional respite for orbiz with a statement that he/she refuses the rectification of defects after the specified time period. This can be done at the earliest after the second attempt to rectify the defect fails.

## § 11 Default in payment

- (1) If the customer still defaults with his/her payment despite the warning, orbiz is authorized to
  - block the account at the expense of the customer. In such cases, the customer is still obligated to pay the agreed user fee.
  - terminate the contract without prior notificationorbiz reserves the right to assert further claims for damages due to default in payment by the customer.
- (2) If orbiz defaults on the service it is obligated to provide, its scope of liability is based on the Telecommunications Customer Protection Decree (Telekommunikations-Kundenschutzverordnung). The customer only has a right to withdrawal, when orbiz does not comply with an appropriate respite specified by the customer for reasons for which orbiz is responsible.
- (3) Unavoidable delays:

If the non-fulfilment or insufficient fulfilment of the contract is due to an event, which is beyond the control of orbiz, the deadline or timeframe is extended by an appropriate time span.

## **§ 12 Third party trademark rights**

- (1) If third party property rights are violated during the conventional use of the service and if the customer is thus partially or completely legally prohibited from using the service, orbiz will do one of the following at its own option and expense
  - grant the customer the right to use the service, or
  - modify the service so that it becomes non-infringing, or
  - replace the service with a similar one, which does not violate property rights
- (2) If a corrective measure according to Paragraph (1) was not possible or economically reasonable, orbiz will cancel the concerned parts of the service and settle the matter with an appropriate compensation for use.
- (3) orbiz is freed from these obligations, when the customer does not act in consultation with orbiz while averting such third party claims.
- (4) The customer is not entitled to more extensive claims resulting from violations of third party trademark rights, in particular those for compensation for consequential damage and indirect damage.

## **§ 13 Liability**

- (1) The following limitations apply to the scope of liability of orbiz as well as its employees, assistants and vicarious agents - regardless of the legal grounds.
- (2) orbiz assumes liability for direct personal and material damage caused to the customer either deliberately or due to gross negligence. In the case of direct damage, which was caused by the slightly negligent violation of obligations essential to the contract, orbiz is only liable for the generally predictable damage. Indirect damage entails the time and effort required to restore the damaged commodity. As a rule, the compensation for damage for the customer is thus his/her right to use the service again free of charge. orbiz is also liable for warranted characteristics. Regardless of their grounds, however, orbiz is not liable for more extensive claims, in particular those for compensation for indirect damages and consequential damages.
- (3) The customer is obligated to immediately report damages and losses, for which orbiz must cover the expenses, to orbiz in writing or have them recorded by orbiz.
- (4) orbiz is only liable for supplying data when it deliberately caused their loss or due to gross negligence and when the data can be reconstructed from data material which is available in machine-readable form and within a justifiable timeframe. If it is not possible to restore the data, orbiz will credit the customer the according number of "surveys including survey participants" to his/her account. Further claims for damage on behalf of the customer are ruled out. A similar regulation holds for cases in which flawed survey results were produced due to technical problems.
- (5) orbiz' liability for damages which were caused due to gross negligence of members of management or high-ranking employees of orbiz as well as orbiz' potential liability on the basis of the Product Liability Law (Produkthaftungsgesetz) will remain unaffected. Liability due to urgent legal regulations also remains unaffected.
- (6) orbiz is not liable or responsible for whether the questionnaire designed by the customer is suitable to fulfil the purpose the customer desires. orbiz also does not guarantee that the survey will lead to the desired success and number of survey participants.

## **§ 14 User free**

In order to use the orbiz service, the customer must pay in advance the fees listed in the currently valid specification of services or price list at the time he/she registers for the service. The customer will receive an invoice from orbiz to do so. The user fee is strictly net when the invoice arrives and is to be paid immediately. As regards subscription fees, the currently valid user fee on the price list is due once again upon extension of contract.

## **§ 15 Change of user fee, the specification of services, or these conditions, etc.**

orbiz is authorized to modify the specification of services, the price list, the conditions as well as any other existing regulations at any point in time. orbiz will notify the customer of such changes either in writing or by email and simultaneously inform the customer that the customer can file an objection within one calendar month after the notification of change was sent, as long as the change is to the disadvantage of the customer.

If the customer does not file an objection in due time, the contract will be continued according to the new conditions and stipulations.

If the customer objects in due time, both contracting parties have the right to terminate the contract with orbiz within four weeks after the objection was filed.

In such cases, the cancellation period is two weeks before the end of the month and must be confirmed as soon as possible.

## **§ 16 Legal reliability**

The customer is only responsible for the legal reliability of the questionnaires designed by him/her and their content. The customer assumes responsibility for the compliance with legal regulations, in particular data protection, copyrights, competition regulations and ancillary rights while dealing with posted images, acoustic and film recordings (media) as well as other documents and materials and immediately indemnifies orbiz and its partners from any claims for damage due to the violation of these rights, as long as orbiz is not at fault.

## **§ 17 General Terms and Conditions**

The customer's General Terms and Conditions will not become part of a contract completed on the basis of these conditions. This also holds when orbiz has not explicitly objected to this.

## **§ 18 Statute of limitations**

Claims due to liability during contract negotiations and default in performance of contract are barred by statute six months after accrument. All other claims are barred by statute three years after accrument, as long as no shorter legal or contractual statutes of limitations apply or the law does not prescribe mandatory longer time periods.

## **§ 19 General Information**

The customer can only convey rights from the treaty completed on the basis of these conditions with the written consent of orbiz. orbiz is authorized to call on or mandate third parties to fulfil its obligations. No subsidiary agreements on the contract concluded on the basis of these conditions exist.

Should any regulations from the contract concluded on the basis of these conditions be or become ineffective in part or in their entirety, this does not affect the applicability of the remaining regulations. The parties are instead obligated to substitute the ineffective regulation with one which is as economically desirable as possible. The place of jurisdiction and fulfilment - where legally permissible - is Konstanz, Germany. However, claims can be asserted to each contracting party under their respective general jurisdiction. The laws of the Federal Republic of Germany apply to all legal relations arranged in the contract on the basis of these conditions. The United Nations Convention on Contracts for the International Sale of Goods is not applicable. The protection of the service provided by orbiz in accordance with international regulations or third-country regulations is not affected by this. If the contract concluded on the basis of these conditions was concluded in writing, the following regulations additionally apply:

The abrogation, modification, and amendment of the contract concluded on the basis of these conditions must be put in writing in order to become legally effective. The same holds for the waiver of the requirement to put these in writing. Hand-written modifications to the contract concluded on the basis of these conditions are not permissible.

This version of the General Terms and Conditions is a translation and only serves the purpose of enabling English-speaking users to better understand them. In cases of doubt, the General Terms and Conditions written in German apply.

## **§ 20 Complaints**

orbiz Software GmbH hopes that you are completely satisfied with the service. If this is not the case, please contact:

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D-78467 Konstanz  
Germany  
E-Mail: [info@2ask.com](mailto:info@2ask.com)  
Internet: [www.2ask.com](http://www.2ask.com)

## **§ 21 Notice on the Right of Withdrawal**

The private customer has the right to repeal his/her declaration of intent to conclude the contract on the use of the service. The deadline for doing so is two weeks and begins when the contract is concluded (arrival of the confirmation from orbiz). To comply with the deadline, it suffices to send notification in text form (e-mail, fax, letters, etc.) in due time. However, the declaration of withdrawal must clearly specify the sender. As soon as the customer has saved a questionnaire or participant for a survey, the right to withdrawal expires.