

## General Terms and Conditions of Compass-Verlag GmbH

These General Terms and Conditions (hereinafter referred to as "GTC") apply to all present and future services provided by Compass-Verlag GmbH, FN [Austrian Business Register number] 124277k, Commercial Court Vienna [*HG Wien*] (hereinafter also referred to as "Compass") to the contracting party (hereinafter referred to as "Subscriber") in connection with the product "Wirtschafts-Compass". Terms or conditions of the Subscriber which differ from the GTC of Compass-Verlag GmbH do not apply.

### 1. Services

**1.1.** "Wirtschafts-Compass" is a web-based application via which the Subscriber may search the Compass databases. The Compass databases are fed from different sources which are linked to one another. The subject matter of the contract, the ancillary conditions of which are stipulated herein, is paid use of Wirtschafts-Compass. Regarding the costs a distinction has to be made between the remuneration to which Compass is entitled and the official fees for specific searches. The conclusion of the contract, the type and volume of the services to be rendered (i.e. the Wirtschafts-Compass specifications), the amount of costs and the term of the contract are separately documented in writing. Unless otherwise agreed, availability guarantees in specific contracts refer to one year.

**1.2.** In the top line of the application, right below the URL, "Support" on the right-hand side provides a link to:

(a) "Hilfe zu Suche, Monitoring und Services", which offers details on the contents of the databases and search features; they constitute supplements to the contractual services defined in each case.

(b) "AGB und Gebührenliste", which offers these GTC as amended from time to time and a regularly updated list of the official fees that will be charged and of the multi-user fee.

(c) "Kontakt", which contains information on the service desk.

**1.3.** Changes to the sub-pages or documents mentioned in Clause 1.2. will immediately become part of the contract if they are purely advantageous for the

Subscriber because of a functional enhancement or if they relate to the official fees. The Subscriber acknowledges and agrees that changes to and enhancements of the application, including, without limitation, with respect to the contents and the database software, may be adapted or renewed by Compass or a group company of Compass at any time. If such changes extend to large areas Compass will inform the Subscriber thereof in writing fourteen (14) days before the change and advise the content of the change.

**1.4.** Compass grants the Subscriber a non-exclusive right to search the Compass databases covered by the specific contract and to use the results for their own or internal purposes, which right is limited to the term of the contract and not transferable to third parties. Specifically, the Subscriber has the right to fill in the search mask, give search instructions upon having filled in the provided search mask and print the results or export them to a document (e.g. an Excel file). This granting of rights is exhaustive; any use beyond the above volume requires the express prior written consent of Compass.

**1.5.** The Subscriber's internet connection is adequate, and they acknowledge that the speed of the search of the database contents depends on the internet connection used by them. During maintenance or system-related shutdowns or during backup times the application may be unavailable (=fault). Liability for availability of data/services is limited insofar as after such a fault the Subscriber is only entitled to a price reduction if the fault is attributable to Compass. If this is the case, a pro-rata price reduction corresponding to the extent of the fault may be claimed.

**1.6.** Prior to conclusion of the contract the Subscriber has sufficiently informed themselves about the functioning of Compass' services and confirms that they know the

services in detail. Owing to this knowledge the Subscriber has decided to use Compass' services in their business in the way defined by themselves. They must seek advice on doubtful issues from Compass' employees or knowledgeable third parties before concluding the contract and they confirm that they possess all the information necessary for proper use of the services provided by Compass. Specifications of the Subscriber must be advised in writing. If training with regard to the search functions of the database contents is requested by the Subscriber, a separate written agreement will be required.

**1.7.** The Subscriber acknowledges that the services being the subject matter of the contract may also be provided by a group company of Compass and gives their consent thereto. The following companies are deemed group companies: Compass-Datenbank GmbH, Compass-Redaktion GmbH, and HF Data Datenverarbeitungsgesellschaft m.b.H. Using or hiring a company other than those mentioned as a subcontractor of Compass requires the Subscriber's written consent.

## **2. Obligations of the subscriber**

**2.1.** The Subscriber's access to the application is enabled via customer identification (page ID), user name and password. The Subscriber is responsible for keeping these access data secret and is liable vis-à-vis Compass for all damage that may arise due to misuse of the password (for further regulations in this regard see Clause 2.4.). In general the Subscriber must observe all legislation applicable to the use of the data provided, such as the Austrian Telecommunications Act [*Telekommunikationsgesetz*] or the Austrian Data Protection Act [*Datenschutzgesetz*] on their own initiative. Compass is under no obligation to provide warnings or clarifications.

**2.2.** In any case the Subscriber is only allowed to print, store or use the searched data for their own or internal purposes. Any disclosure of data or forwarding of print-outs to third parties, be it for consideration or for free, in a changed or unchanged form, is prohibited. Compass is entitled to take appropriate technical steps to monitor compliance with this restriction on use. The Subscriber is under a general obligation to keep secret any and all data and information received by them during performance of the contract by Compass for an unlimited period of time.

**2.3.** The contents and structure of the databases and the search methodology are the intellectual property of Compass. The Subscriber observes the Austrian Copyright Act [*Urheberrechtsgesetz*], including, without limitation, with respect to the provisions on databases and database works. In this context the Subscriber undertakes to refrain from anything that might allow them or third parties to imitate the search methodology or the contents or structure of the databases. In particular, the Subscriber is prohibited from feeding all or parts of the searched data into a separate database.

**2.4.** Not later than upon signing the contract the Subscriber must provide Compass with the name of an administrator. The administrator will be granted the right to create and manage users for use of the contents of the database. Only natural persons may be created as users. Every user is responsible for using and keeping secret their user ID and required to protect their access data against unauthorised access. In the case of misuse of a user ID Compass may block the access concerned. The administrator will immediately be informed of any such block and help clear it up. If the Subscriber failed to fulfil their obligation to properly keep the access data safe, which they will have the burden to prove, they will become liable vis-à-vis Compass for any damage suffered.

**2.5.** The Subscriber must immediately notify Compass of all circumstances that may compromise any requirements that need to be fulfilled to enable operation of the search application. If Compass learns of facts which may prevent Compass from rendering its services in compliance with the contract, Compass will immediately inform the Subscriber thereof and of the conclusions drawn therefrom.

**2.6.** The obligations defined in this Clause, in particular those in paragraphs 2.1., 2.2. and 2.3., will survive termination of the contract with Compass. If Compass is held liable by third parties on account of a violation of an obligation that can be deduced from the contract by the Subscriber, the Subscriber must fully indemnify and hold harmless Compass.

### 3. Fees

**3.1.** The Subscriber is required to pay the contractually agreed prices or the prices according to the price list as amended from time to time; stability of value is deemed agreed. The benchmark for calculation of value adjustments is the Consumer Price Index, which is published monthly by Statistics Austria, or an index replacing the same *ex officio*. The reference figure for adjustments is the index figure published for the month in which the contract is concluded. All changes are calculated to one commercially rounded decimal place. Compass will review the applicability of the stable-value cause at regular intervals and at least once every calendar year and is entitled to charge the Subscriber any resulting increase amounts, including retrospectively. Offsetting such increased amounts against receivables from Compass is excluded.

**3.2.** Billed amounts are payable immediately upon receipt of the bill. In the case of a lump-sum arrangement, bills will be issued at the beginning of the lump-sum period. Any acquisition of title by the Subscriber is subject to the condition precedent of fulfilment of their contractual obligations. Payments will always be credited to the oldest account receivable. The Subscriber is not entitled to withhold payments on account of potential default on the part of Compass. In the case of late payment statutory late payment interest and the necessary dunning and collection charges as defined in Section 1333 of the Austrian Civil Code [*ABGB*] will be charged and the said statutory provision will be extended beyond its area of application to cover legal relationships with consumers as defined by the Austrian Consumer Protection Act [*KSchG*].

**3.3.** Compass is entitled to pass on increases in its cost prices (including, without limitation, the data procurement prices) to the Subscriber. The Subscriber will be informed about the price increase at least one month before it will become effective. If a monthly or annual lump sum has been agreed, Compass will also be entitled to raise the lump sum if the user frequency exceeds the frequency on which the calculation is based by 3% or more or if the user frequency increases by 3% or more year on year.

**3.4** The Subscriber must immediately notify Compass in writing of any changes of their name or business name or any change of their address or of the type of their business entity/legal form and their Business Register

Number. If the Subscriber fails to notify such changes and if for that reason they do not receive legally relevant communication from Compass sent to the address or email address most recently advised by them, in particular bills, payment reminders or notices of termination, such communication from Compass will be considered received nonetheless.

### 4. Warranty and liability

**4.1.** Compass assumes no warranty for uninterrupted availability of its services and is not liable for any damage the Subscriber may suffer as a result of search operation faults. Warranty only applies to the extent that Compass has made an express written promise with regard to a specific quality of the service item. Any advertising materials whatsoever provided by Compass that contain technical data or quality descriptions constitute no promised qualities. Due to the nature of the internet no guarantee whatsoever is made regarding permanent availability and/or accessibility of the contents of the database. Compass will timely notify the Subscriber of any interruptions or material restrictions, to the extent that the same are necessary for maintenance, carrying out of internal work or for preventing faults. Such advised interruptions do not entitle the Subscriber to a reduction in charges (unless Clause 1.5. applies).

**4.2.** To the extent permitted by law the following limitations of liability are agreed: any liability of Compass for damage caused by slight negligence on the part of an officer, employee or agent [translator's note: *Erfüllungsgehilfe* as defined in Section 1313a *ABGB*] is fully excluded. Any liability of Compass for damage caused by gross negligence on the part of an officer, employee or agent is limited to half of the contract value for the specific claim. The total of all claims for damages which result from one particular service that is continuously provided, can be limited and is thus coherent is deemed a single claim.

**4.3.** Compass is not liable for completeness or accuracy of information contents and/or for profit lost or for pecuniary or consequential damages arising from the use of search results. Under the limitations of liability of paragraph 4.1 and the limitations of liability of paragraph

**4.2.** Compass only warrants that the information purchased at the instigation of Compass will not be

changed by Compass in such a way that the change affects the informative value of the information. Print-outs of search results may also contain additional limitations of liability. The Subscriber acknowledges and agrees that they are also deemed agreed.

**4.4.** Any claim of the Subscriber for damages will become time-barred 18 months after the date the Subscriber becomes aware of the damage and of the party who caused the damage and in any case 10 years after occurrence of the damage.

**4.5.** If the Subscriber is held liable or threatened to be held liable for an infringement of intellectual property rights of third parties due to use of the products being the subject matter of the contract, the Subscriber will immediately inform Compass. The Subscriber will grant Compass the possibility to defend the claim and/or obtain full justice; otherwise they will lose their right of recourse.

## **5. Term of the agreement/termination**

**5.1.** Unless otherwise agreed in the relevant contract, the contract will be concluded for an indefinite period of time. Contracts concluded for an indefinite period of time and contracts renewed for an indefinite period of time may be terminated by either party without stating reasons as of the end of any quarter by giving one month's written notice.

**5.2.** Compass is entitled to terminate the contractual relationship for important reason (cause) with immediate effect and without observing a notice period. Causes include but are not limited to (a) violation by the Subscriber of their contractual obligations; (b) opening of insolvency proceedings over the assets of the Subscriber or non-opening of insolvency proceedings for lack of sufficient assets to cover the costs; (c) late payment on the part of the Subscriber despite having been granted a grace period of 14 days to fulfil the outstanding payment obligations.

**5.3.** In the cases stated above Compass is also entitled to temporarily block the Subscriber's access. The contractual obligations of the Subscriber will not be affected thereby. The block will be lifted if and when the reasons for the block no longer exist and the Subscriber has refunded the costs of the block and lifting of the same.

## **6. Fair use**

**6.1.** The Subscriber will not exceed the contractually agreed search volume during the term of the contract. A tolerance threshold of 3% is deemed agreed (fair use). If the volume is exceeded in the said monitoring period, the searched data content will be charged at a later point.

**6.2.** In the case of violations of the fair use provisions, Compass reserves the right to terminate the contractual relationship with the Subscriber with immediate effect.

## **7. Enticing away of staff**

Both parties are prohibited from enticing away staff of the respective other party. In the case of non-compliance the Subscriber or Compass will owe a contractual penalty of EUR 50,000 in each case, which is not subject to a judicial right of reduction. Any additional damage must be compensated for.

## **8. System changes**

Compass may decide at its own discretion to change the mode of data transmission and the data structure after having given 3 months' notice and expiry of that period. Where necessary, Compass is also entitled to extend or shorten this period by one to two months.

## **9. Final provisions**

**9.1.** Modifications of or amendments to any contract must be made in writing; this also applies to an abolishment of the requirement of written form.

**9.2.** The Subscriber will be notified of modifications of or amendments to the GTC by letter, e-mail or online upon the next login. Such modifications or amendments will become part of the contract unless the Subscriber objects thereto in writing within a maximum of fourteen (14) days.

**9.3.** All contractual relationships concluded with the Subscriber are governed by Austrian law; UN Sales Law and Austrian private international law is excluded. The

place of performance and the place of jurisdiction is Vienna.

**9.4.** If any provision is or becomes ineffective and/or incomplete or contradicts statutory requirements, the provision that has become ineffective will be replaced by a legally valid provision which comes as close as possible to the ineffective provision in terms of its financial effects. The ineffectiveness or incompleteness of any provision will not affect the validity of the other provisions.

**9.5.** At <https://compass.at/gdpr/compass.pdf> reference is made to data protection law issues.