

## **GENERAL TERMS AND CONDITIONS**

### **IPVDATA**

These General Terms and Conditions apply to the use of the Service provided by IPVDATA as defined below.

#### **1 DEFINITIONS**

- 1.1 *Account*: the private and confidential environment managed by the Client and to which the Client, or someone working for the Client, has access. Secure access to the account is controlled through the use of login details;
- 1.2 *General Terms and Conditions*: these general terms and conditions;
- 1.3 *Dashboard*: the interface through which the Client can access Data;
- 1.4 *Data*: the collection of data put together by IPVDATA concerning selling prices, promotion prices and mechanisms, promotional information from brochures, data from Retailer product pages, names, numbers of products for each Retailer and meta-data for the products, as well as links to products, and the data that IPVDATA itself generates using this data;
- 1.5 *Service*: measuring and accessing the Data as defined in the Quote, both by providing access to the Dashboard and by sending Reports and/or Data periodically or one-time only;
- 1.6 *Login Data*: the username and password with which the Client can gain access to the Dashboard;
- 1.7 *IPVDATA*: the private limited company IPV data B.V., registered office Europalaan 400, 3526 KS, Utrecht, registered at the Chamber of Commerce under number 67459552;
- 1.8 *Intellectual Property Rights*: all intellectual property rights and related rights, including copyrights, trademark rights, patent rights, design rights, trade name rights, database rights and neighbouring rights, as well as rights to know-how and performances on a par with such rights;
- 1.9 *Client*: the natural person who or legal entity that has concluded an Agreement with IPVDATA to use the Service;
- 1.10 *Quote*: the quote from IPVDATA in which the quote for the Agreement is set out, including any explanations in connection with that quote;
- 1.11 *Agreement*: any agreement with a Client for using the Service;
- 1.12 *Parties*: IPVDATA and the Client jointly;
- 1.13 *Software*: the IPVDATA software which underpins the Dashboard, the Reports and the IPVDATA website;
- 1.14 *Report*: a presentation of Data, whether or not curated;
- 1.15 *Retailers*: those parties about whom IPVData collects Data and makes it available via the Service.

#### **2 APPLICABILITY AND THE AGREEMENT**

- 2.1 These General Terms and Conditions apply to any Agreements with the Client, any legal transactions with or quotes from IPVDATA, and to any use the Customer makes of the Service.
- 2.2 The Agreement comprises the Quote together with these General Terms and Conditions. In the event of any conflict between these General Terms and Conditions and the Quote, the provisions set out in the Quote shall take precedence.
- 2.3 Any amendments or additions to this Agreement shall only be valid where agreed in writing between the Parties.
- 2.4 IPVDATA will accept any offer made by the Client only by signing a physical document or by explicitly accepting the offer by email. For the sake of clarity: ticking a box or clicking a button does not qualify as acceptance on the part of IPVDATA.
- 2.5 If any provision of the General Terms and Conditions is void or voided, the other provisions of the General Terms and Conditions will remain unimpaired. In that event, the Parties will consult with each other to agree new provisions to replace the void or voided ones, taking into account the purpose and scope of the void or voided provisions to the extent possible.
- 2.6 Quotes from IPVDATA are without obligation, except where a deadline for acceptance is stated. Quotes do not place IPVDATA under any obligation to perform only part of the work quoted for and then charge proportionally. Offers or quotes do not automatically apply to future orders.
- 2.7 IPVDATA is under no obligation to honour a Quote where the Client should reasonably have understood that the Quote, or part of it, includes an obvious mistake or error.

- 2.8 IPVDATA is under no obligation to honour a quote or offer where the acceptance deviates from what was set out in the quote or offer, no matter to what degree.
- 2.9 Lead times quoted, including lead times for Reports, are indicative only and do not count as strict deadlines, except where the Parties have specifically agreed otherwise in writing.

### **3 THE SERVICE**

- 3.1 The Service consists of accessing Data via the Dashboard and through Reports, as defined in clauses 5 and 6 of these General Terms and Conditions. The Service is provided to the Client on a non-exclusive basis. The objective of the Service is to improve transparency in the market.
- 3.2 IPVDATA will make an effort to the best of its ability to provide the Service with proper care. Unless otherwise expressly agreed in writing, IPVDATA provides the Service on the basis of a best-efforts obligation.
- 3.3 IPVDATA reserves the right to amend the content or scope of the Service. IPVDATA will advise the Client in this regard in good time. If this involves a material restriction concerning the functionality of the Service as agreed, the Client shall be entitled to terminate the Agreement in writing within thirty (30) days of notice, with effect from the date when the adjustment is due to take effect. Except where specifically agreed otherwise in writing, IPVDATA is under no obligation to maintain, modify or add particular features or functionality of the Service or Software specifically for the Client.
- 3.4 IPVDATA may temporarily deactivate and/or restrict the use of the Service in full or in part if it is of the opinion that such deactivation or restriction is necessary, for instance for preventive, corrective or adaptive maintenance purposes. IPVDATA will notify the Client as soon as practicable, but at any rate at least five (5) business days in advance, of any temporary unavailability or restrictions on the use of the Service. If an emergency requires IPVDATA to deactivate the Service or restrict its use with immediate effect, IPVDATA will notify the Client as soon as the circumstances permit.
- 3.5 IPVDATA provides support in relation to the Service only if and insofar as agreed in the Agreement.
- 3.6 The Client is responsible for ensuring that all data which IPVDATA specifies as being required or which the Client should reasonably understand as being required for the performance of the Agreement are submitted to IPVDATA in good time. The Client guarantees these data to be correct, up to date and complete.

### **4 THE DATA**

- 4.1 IPVDATA has a set range of Retailers from whom Data is gathered. The Parties may also agree as part of the Quote that IPVDATA is to collect Data from retailers other than these Retailers. Those retailers are therefore also regarded as Retailers in these General Terms and Conditions.
- 4.2 The Data which IPVDATA makes available through the Service is collected from the Retailers' websites. IPVDATA endeavours to index all products on the Retailers' websites and to verify the accuracy of the Data. However, IPVDATA cannot guarantee that the Data is accurate, complete or up to date at all times.
- 4.3 The prices indexed online may vary from the prices applying in the Retailers' actual retail premises. IPVDATA will only collect Data from Retailers' actual premises where this is stated in the Quote.
- 4.4 Where a Client is aware that Data is not correct, complete or up to date, the Client should notify IPVDATA immediately. IPVDATA will then endeavour to remove or correct the Data.
- 4.5 The Client accepts that IPVDATA is to some degree dependent on the Retailer websites for collecting Data and on the way in which Retailers display (price) data in actual sales locations. Where, for whatever reason, it is no longer possible for IPVDATA to collect and/or disclose the Data, IPVDATA will advise the Client accordingly. In such event, the Client does not acquire a right of termination.

### **5 DASHBOARD**

- 5.1 This clause applies when IPVDATA grants the Client access to the Dashboard under the Agreement.
- 5.2 The Quote sets out which Data the Dashboard displays, and the number of Retailer products for which Data is displayed on the Dashboard. The Client can select on the Dashboard those Retailer products for which Data should be displayed.
- 5.3 Login via an Account is required in order to use the Dashboard. Clients can operate as many Accounts as are set out in their Agreement. Accounts are strictly private and confidential. Clients can purchase additional Accounts for a fee.

- 5.4 Clients have responsibility for keeping the Login Details to their Accounts confidential. Where a Client knows or has reason to suspect that Login Details have come into the hands of anyone unauthorised, the Client should notify IPVDATA of this immediately, notwithstanding its own duty to take effective measures itself immediately, such as changing the Login Details.
- 5.5 The Client agrees and accepts that they are responsible and liable at all times for any use of the Service by third parties via an Account operated by them. The Client shall indemnify IPVDATA against any loss or damage arising from or in connection with third parties using an Account operated by the Client.

## **6 REPORTS**

- 6.1 This clause applies when IPVDATA supplies a Report to the Client under the Agreement.
- 6.2 The Quote sets out the Data to be included in the Report.
- 6.3 Reports are strictly private and confidential. The Client is under an obligation to keep the Report fully confidential and not to disclose it to third parties. Clients may only share the Report within their own organisation with employees who are bound by a duty of confidentiality. The Client will fully protect the Report against unauthorised access by third parties, using security measures at least as stringent as those which the Client uses to protect its own confidential information.
- 6.4 The Client is granted merely a limited right of use under the applicable Intellectual Property Legislation to use a Report for its own internal business purposes.
- 6.5 In the event of any breach of the provisions under paragraph 3 of this clause, IPVDATA shall impose on the Client a penalty of €10,000 for each and every breach, due and payable immediately, without prejudice to IPVDATA's right to compensation where this exceeds the penalty.

## **7 GUARANTEES AND INDEMNITIES**

- 7.1 Any use of the Service, the Data and the Reports is at the Client's risk and expense. IPVDATA will not be liable for any loss, incorrectness or incompleteness of, or damage to, the Data or the Reports.
- 7.2 Unless otherwise expressly agreed in writing, IPVDATA does not guarantee that the Service is available at all times without interruptions or malfunctions. Factors causing malfunctions in the Service include but are not limited to breakdowns in Internet or telephone connections, viruses and errors/defects. IPVDATA will not be liable to the Client in any way whatsoever for any loss or damage arising from or caused by the temporary unavailability or mid-term failure of the Service.
- 7.3 The Client undertakes to refrain from using the Service, including the Dashboard, the Data and the Reports, in any manner that:
- a) infringes the rights of IPVDATA or third parties, including but not limited to Intellectual Property Rights;
  - b) violates any applicable law or regulation, which expressly includes competition legislation; or
  - c) violates any provision of these General Terms and Conditions or the Agreement.
- 7.4 The Client indemnifies IPVDATA against all loss, damage and costs arising from and/or relating to any violation of the warranties set out above. Any expenditure, loss or damage incurred by IPVDATA that is related in any way whatsoever to claims by third parties arising from a violation of a warranty will be reimbursed or compensated by the Client, unless the Client demonstrates that the relevant loss, damage or expenditure was caused by a violation on the part of IPVDATA of any provision of these General Terms and Conditions or the Agreement.

## **8 FEES AND PAYMENT**

- 8.1 The usage fee for the Service is specified in the Agreement. Fees are quoted exclusive of VAT and other government levies, unless otherwise specified.
- 8.2 IPVDATA is entitled to adjust the applicable fees on at least three (3) months' prior written notice. If the Client does not agree to such a fee adjustment, the Client may give written notice to terminate the Agreement with effect from the effective date of the adjustment within thirty (30) days after receiving the notification. The Client will not be entitled to terminate the Agreement if the fee increase is in accordance with the consumer price index published by Statistics Netherlands (CBS) or is caused by any of the following factors: i) increases in taxes or other government levies and/or duties, ii) exchange rate movements, iii) rises in wages, transport costs and/or purchase prices.

- 8.3 All fees relating to the Service provided by IPVDATA must be paid in advance on a monthly basis. Payment must be made within thirty (30) days of the invoice date, unless otherwise expressly agreed in writing or specified in the invoice.
- 8.4 If after the expiry of the payment term IPVDATA has not received payment (in full), the Client will be in default without any prior demand or notice of default being required. The Client will owe interest at the statutory commercial interest rate from the default date.
- 8.5 If the Client remains in default after receiving notice, IPVDATA may turn the claim over to an enforcement agent. In that event, the Client will be liable for all expenses incurred by IPVDATA on account of late payment, such as costs of legal proceedings and judicial and extrajudicial collection costs, including costs of legal assistance and fees of bailiffs and debt collection agencies. The extrajudicial collection costs will amount to at least 10% of the invoice amount, subject to a minimum of EUR 150 exclusive of VAT.
- 8.6 Complaints relating to invoices and/or the Service do not suspend the Client's payment obligations.

## **9 INTELLECTUAL PROPERTY RIGHTS AND RIGHT OF USE**

- 9.1 The Intellectual Property Rights relating to the Service, including the Intellectual Property Rights to the Data, the Reports, the Software, the look and feel of the Dashboard and any trademarks and trade names of IPVDATA, are vested in IPVDATA or its licensors. If and insofar as such a right can be acquired only by filing an application for registration or by effecting registration, IPVDATA will have the sole and exclusive power to do so. No provision of the Agreement is intended to transfer any Intellectual Property Rights to the Client in any way whatsoever.
- 9.2 Provided that the Client meets its obligations under the Agreement with IPVDATA in full, IPVDATA grants the Client a limited, personal, revocable, non-exclusive, non-sublicensable and non-transferable right to use the Service, including the Dashboard, the Data and the Reports, for the Client's own internal business purposes. The licence to use the Dashboard is limited to usage by the agreed number of Accounts. The licence to use the Data and the Reports is limited to usage on the Client's business premises specified in the Agreement.
- 9.3 The rights granted to the Client in this Article expressly exclude the right to commercialise the Data and/or the Reports in any way whatsoever or to give third parties access to the Dashboard.
- 9.4 Except insofar as permitted by mandatory law, the Client may not reproduce, decompile or reverse engineer the Software. The Client is also prohibited from removing and/or circumventing any security features or technical restrictions on the use of the Service and/or the Software.
- 9.5 IPVDATA is not under any obligation to provide the Client with a physical data carrier containing the Software to be made available to the Client within the framework of the Service.
- 9.6 The Client grants IPVDATA the right to read out (whether or not electronically) the Client's webshop, websites and/or other commercial communications and to add the collected information to the Data. This right on the part of IPVDATA will remain intact on termination of the Agreement, irrespective of the reason for termination.

## **10 TERM AND TERMINATION**

- 10.1 The initial term of the Agreement is set out in the Quote. Upon expiry of the initial term, the Agreement is automatically extended for periods equivalent to the initial term, except where one of the Parties terminates the Agreement in writing giving due notice of at least three (3) months before the (initial or extended) term expires.
- 10.2 Unless otherwise expressly agreed, the Parties may not terminate (in Dutch: 'opzeggen') the Agreement before the end of the agreed term.
- 10.3 Notwithstanding statutory provisions, the Client may only terminate the Agreement in the event of a material failure on the part of IPVDATA in the performance of the Agreement, where they are at fault, provided that IPVDATA has been given notice of default in writing from the Client and IPVDATA is afforded a period of at least ten (10) working days to rectify the problem, and this deadline then expires without IPVDATA having rectified the problem.
- 10.4 Either Party may terminate (in Dutch: 'ontbinden') the Agreement in full or in part in the event that the other Party is declared bankrupt or insolvent or is granted a suspension of payments and in the event that the other Party's business is discontinued or wound up. In the event of the Client's bankruptcy or

insolvency, IPVDATA will be entitled to terminate the granted right of use unless the consequences of such termination are contrary to the principles of reasonableness and fairness.

- 10.5 If the Agreement is terminated (in Dutch: 'ontbonden'), IPVDATA's performance to date will not be reversed. All amounts that IPVDATA invoiced prior to the termination for what it has properly carried out or provided in performing the Agreement remain payable in full with due observance of the provision of the preceding sentence and become immediately due and payable on the termination date.
- 10.6 If the Agreement is terminated for any reason whatsoever, the Client's right to use the Service, the Data and the Reports will lapse and access to the Dashboard will be denied, both with immediate effect. On termination of the Agreement, irrespective of the reason for termination, IPVDATA will immediately delete the Accounts. The Client will be obliged to immediately delete all Data and Reports and confirm this to IPVDATA in writing.
- 10.7 IPVDATA is not under any obligation to provide the Client with, to maintain or to convert any information, materials or the Data once the Agreement has been terminated.
- 10.8 Provisions under the Agreement which by their nature are intended to apply beyond termination of the Agreement shall apply beyond termination.

## **11 LIABILITY**

- 11.1 IPVDATA's liability for an attributable failure to perform its obligations and/or its liability arising from a wrongful act is limited to compensation of the direct loss or damage incurred by the Client, subject to a maximum of the fee stipulated for the performance of the Agreement for a term of one (1) year. However, IPVDATA's total liability for direct loss or damage of whatever nature will in no event exceed EUR 25,000,=.
- 11.2 'Direct loss or damage' is understood to mean exclusively:
- a. reasonable expenses that the Client would need to incur to have IPVDATA's performance conform to the Agreement;
  - b. reasonable expenses incurred to assess the cause and extent of the loss or damage, insofar as the assessment is related to direct damage within the meaning of these General Terms and Conditions;
  - c. reasonable expenses incurred to prevent or limit loss or damage, insofar as the Client demonstrates that these expenses have served to limit direct loss or damage within the meaning of these General Terms and Conditions.
- 11.3 Any liability on the part of IPVDATA for loss or damage other than direct loss or damage ("indirect loss or damage"), including but not limited to consequential loss or damage, loss of and/or damage to data, loss of profit and loss of turnover, is excluded.
- 11.4 The limitations set out in the preceding paragraphs of this Article will cease to apply if and to the extent that the relevant loss or damage is caused by an intentional act or omission or wilful recklessness on the part of IPVDATA or its management ("own acts").
- 11.5 In any event, IPVDATA will be liable for an attributable failure to perform an Agreement only if the Client promptly gives IPVDATA proper written notice of default, granting it a reasonable term to remedy the attributable breach, and IPVDATA fails to remedy the breach within the specified time, unless the failure is permanent. The default notice must describe the breach as accurately and completely as possible, to enable IPVDATA to respond adequately. The foregoing will also apply in the event that no notice of default is required by law.
- 11.6 A prerequisite for the validity of any right to compensation is always that the Client reports any loss or damage in writing to IPVDATA as soon as possible following discovery. The right to claim for compensation against IPVDATA lapses automatically twelve (12) months after any loss or damage occurs.
- 11.7 Limitations of liability included under the Agreement can also be invoked by the directors and employees of IPVDATA.
- 11.8 The provisions of this Article and all other limitations and exclusions of liability referred to in these General Terms and Conditions also apply for the benefit of natural persons and legal entities engaged by IPVDATA in the execution of the Agreement.

## **12 FORCE MAJEURE**

- 12.1 Within the framework of these General Terms and Conditions and in addition to the relevant statutory provisions, force majeure is also understood to include any situation in which IPVDATA is prevented from meeting its obligations under the Agreement due to a strike by IPVDATA's own staff or the staff of third parties, flooding, power failures and force majeure affecting IPVDATA's subcontractors.
- 12.2 IPVDATA is also entitled to plead force majeure if the circumstance preventing it from performing the Agreement (in full) first occurs after it should have met its obligations.

## **13 OTHER PROVISIONS**

- 13.1 Email messages constitute written notice, unless otherwise expressly agreed.
- 13.2 The Client may not, without IPVDATA's prior written consent, transfer any right under any Agreement with IPVDATA to third parties. Such consent will not be unreasonably withheld.
- 13.3 IPVDATA may transfer its rights and obligations arising from these General Terms and Conditions and/or the Agreement to third parties. In that event, it will notify the Client accordingly.
- 13.4 The Agreement between the Client and IPVDATA and the use of the Service are governed by Dutch law. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- 13.5 Except insofar as otherwise prescribed as mandatory by national or international rules of law, all disputes arising from or relating to any Agreement concluded subject to these General Terms and Conditions, or Agreements deriving from it, will be exclusively brought before the competent court in Amsterdam, the Netherlands.

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