

## **General Terms and Conditions of Facelift brand building technologies GmbH**

These general terms and conditions apply to contracts for the use of Facelift Cloud. They consist of the following parts:

### **Part I - General regulations**

### **Part II - Service Level Agreement**

### **Part III - Regulations for supplementary services**

### **Part IV - Individual services**

Regulations of Parts II ff. shall take precedence over regulations of Part I insofar as they contradict them.

### **Part I - General regulations**

#### **1. General and conclusion of contract**

- 1.1. These Terms and Conditions apply to contracts for the use of Facelift Cloud and the services offered by us in connection therewith. Our offer is directed exclusively at entrepreneurs within the meaning of § 14 BGB (German Civil Code), legal entities under public law or special funds under public law.
- 1.2. Deviating, conflicting or supplementary terms and conditions of the customer shall not become part of the contract, even if we are aware of them, unless their validity is expressly agreed. These terms and conditions shall also apply if we perform the service without reservation in the knowledge of terms and conditions of the customer that are contrary to or deviate from our terms and conditions or additional terms and conditions.
- 1.3. Our offer is subject to change and non-binding. If the customer accepts our offer, he legally submits to us the offer to conclude a corresponding contract. The customer is bound to his offer for a period of two weeks. Within this period, we may declare acceptance or rejection of the customer's offer. Acceptance is effected by confirmation of the conclusion of the contract in text form by us or by provision of Facelift Cloud.
- 1.4. Should the customer's company name, address or legal form change after conclusion of the contract, the customer must inform us of these changes without delay. He shall not be entitled to have invoices corrected that were not issued correctly due to failure to update the data.
- 1.5. Only the information listed in the offer or contract shall be deemed agreed as the quality of Facelift Cloud. Statements, recommendations or advertising deviating from this do not constitute contractual quality specifications.

#### **2. Deployment of Facelift Cloud**

- 2.1. We shall make Facelift Cloud available to the customer within a reasonable period of time after the conclusion of the contract for use via the internet in accordance with the provisions of this contract. Typically, this is the case when we have informed the customer by email that his account has been set up.
- 2.2. For the provision and operation of Facelift Cloud, we exclusively use servers within the European Union, unless explicitly agreed otherwise with the customer.
- 2.3. In order to be able to use Facelift Cloud for social media services, the customer must grant Facelift Cloud appropriate access to the respective customer profiles in the social networks with sufficient authorisations and maintain access for the duration of the contract.
- 2.4. Upon provision of the Facelift Cloud, we offer the customer's IT administrators initial standard training on administration and functionality. The exact content and duration of the training is at our discretion. Furthermore, we grant the customer access to the Facelift Cloud knowledge database for the duration of the contract.

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### **3. Use of Facelift Cloud by the customer**

- 3.1. Within the scope of the respective order, the Customer shall receive simple, non-sublicensable, non-transferable rights to Facelift Cloud, limited to the term of this contract, for use in accordance with the contract and in accordance with the scope agreed in each case (e.g. activated modules, number and type of users, number of benchmarking profiles, trendwatch streams, ad accounts).
- 3.2. Within the scope of the acquired possibility of use, the customer may only allow Facelift Cloud to be used by users who belong to the customer (e.g. employees, executive bodies). Only personal e-mail addresses (no generic e-mails such as info@, or support@) that can be clearly assigned to a natural person may be used as customer logins. The transfer of the possibility of use to third parties, including affiliated companies within the meaning of §§ 15 ff. AktG (German Stock Corporation Act), is not permitted unless it has been expressly agreed with us.
- 3.3. Each party shall take customary and reasonable precautions to protect user IDs and passwords of users from becoming known to unauthorised third parties. The parties shall inform each other if they suspect that user IDs and/or passwords may have become known to unauthorised third parties. In this case, the user accounts must be secured immediately by the party that discovered this by changing the access data; if this is done by us, we will inform the customer accordingly. The customer shall immediately delete or change access data of former users.
- 3.4. The customer shall not use Facelift Cloud in violation of the terms of use applicable to the connected services (e.g. Facebook, WhatsApp, Twitter, Instagram), of third party rights or for unlawful purposes. In particular, he will refrain from any use that could lead to us being accused of violating the terms of use applicable to the connected services, the applicable laws or the rights of third parties. He will indemnify us against all corresponding claims of third parties, including reasonable costs of legal examination and representation.
- 3.5. If the customer violates the provisions of paragraph 3.4, we may, to the extent necessary, block the customer's access or that of its users to Facelift Cloud or the corresponding services or data, if the violation can thereby be stopped or mitigated in our reasonable discretion. If it is reasonable for us to do so, we shall inform the customer of the infringement of paragraph 4 and request the customer to remedy the infringement within a reasonable period of time. The request or the information about a measure taken shall be sent by e-mail to administrator e-mail addresses stored in the customer account. Instead of blocking, data may also be deleted at our reasonable discretion if we are obliged to do so at our reasonable discretion, blocking is not sufficient to remedy the breach and the order processing agreement concluded with the customer is not breached.
- 3.6. If the customer continues to violate or repeatedly violates the provisions of paragraph 4 despite an appropriate warning, we may terminate the contract without notice. We are also entitled to extraordinary termination if a single violation of paragraph 4 was so serious that we cannot reasonably be expected to continue working with the customer.
- 3.7. All customer-related platform data stored for the customer in Facelift Cloud, in particular profile insights, post-performance data, feed data etc., will be available for a maximum of one year after the respective date of first storage.

### **4. Adjustment of the ordered services by the customer**

- 4.1. The customer may extend the contract concluded with him at any time to include additional chargeable services offered to him by us. In this respect, the contract shall be extended for the respective current fixed term and the fee accruing for the additional services shall be invoiced pro rata temporis.
- 4.2. A reduction of the services purchased by a customer is only possible if we offer these services for purchase individually (e.g. add-ons, profiles, user licences). It can be effected as a partial termination in accordance with the regulations on the termination of the contract.

### **5. Special regulations for a free trial version ("Trial")**

- 5.1. Insofar as we provide the customer with a free trial version of Facelift Cloud, the following paragraphs shall apply, which in the event of contradictions shall take precedence over the other provisions of these Terms and Conditions.
- 5.2. The free test version is provided to the customer as it is for test purposes. For this version we do not owe that it includes a certain range of functions and that the services owed by us are always available and error-free for the duration of use. We only owe an effort to operate the test versions with the same care as our offers subject to a charge. However, since we are not paid for the trial version, we cannot enter into any further obligations.
- 5.3. The free trial version may only be used for such purposes where defects in performance, the failure of our performance and the loss of data do not entail any damage to the customer or third parties.

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- 5.4. Our liability is limited to intent and gross negligence.
- 5.5. Either party is entitled to terminate a corresponding contract at any time, unless a minimum term has been agreed with the customer.

## **6. Charges and billing, change of agreed charges**

- 6.1. We settle the charges agreed with the customer on conclusion of a contract for the agreed contract term at the beginning of the respective term. The fees granted to the customer are consideration for the fixed contract term that the customer enters into with us.
- 6.2. All charges stated by us are net prices and are always in euros, unless otherwise agreed.
- 6.3. Customers for whom turnover tax is invoiced according to the reverse charge procedure must notify us of their turnover tax ID within one week of acceptance of our offer, otherwise we shall be entitled to invoice German turnover tax to the customer. The customer shall not be entitled to subsequent correction of corresponding invoices.
- 6.4. We are entitled, despite the customer's stipulation to the contrary, to first offset payments against the customer's older debts. If we are already entitled to claims for reimbursement of costs or interest, we shall be entitled to set off the payment first against the costs, then against the interest and finally against the main performance. We will inform the customer of any offsetting that deviates from his details.
- 6.5. In the event of default of payment by the customer, we are entitled to charge a one-time flat-rate default fee per corresponding invoice in accordance with § 288 para. 5 BGB (German Civil Code). The possibility of asserting any further damages caused by default remains unaffected.
- 6.6. Invoices can be issued in digital form and sent by e-mail or made available on our website in the customer area. Invoices issued are generally due for payment after 14 days.
- 6.7. The fees agreed with the customer shall increase by 5% with effect from the beginning of the respective following contract term. We are entitled to adjust the agreed fees with a higher percentage if we announce the increase at least one month before the beginning of the respective notice period of the contract by e-mail to the e-mail address of the customer stored in the customer profile. The adjustment may take effect at the earliest after the time at which the customer can terminate the contract after receipt of the information.

## **7. Term and termination**

- 7.1. The contract is concluded for the fixed term selected by the customer when placing his order. It can only be terminated before the end of the fixed term for good cause. Otherwise, termination is possible with a notice period of three months to the end of the respective contract term. If no notice of termination is given, the contract term shall be extended by a further year in each case.
- 7.2. The right to terminate for good cause remains unaffected. The following reasons in particular shall be deemed to be good cause if they exist for the other party:
  - the breach of material contractual obligations by the other party if the breach is not remedied despite a reminder and the setting of a reasonable deadline with reference to the right of termination. A reminder and setting of a deadline are not required in the case of unreasonableness;
  - the rejection of the opening of insolvency proceedings for lack of assets;
  - the opening of the liquidation;
- 7.3. We are entitled to terminate the contract without notice if the customer is in default of payment of the fee agreed for the use of Facelift Cloud or of a not insignificant part of the fee for two consecutive dates or is in default of payment of the fee in a period extending over more than two payment dates in an amount equal to the fee agreed for two months.
- 7.4. Termination for failure to provide contractual use of Facelift Cloud is only permissible after we have been given a reasonable opportunity to remedy the defect and this has failed.

## **8. Future development of Facelift Cloud**

- 8.1. With Facelift Cloud, the customer is not buying a static product. Rather, we intend to further develop Facelift Cloud to offer new features and offerings that make Facelift Cloud more attractive and secure. The scope of Facelift Cloud is therefore subject to

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change. In the event of changes that would result in the elimination or significant restriction of existing, essential functions, we will inform the customer of this within a reasonable period of time to the e-mail addresses stored for administrators.

- 8.2. If changes to Facelift Cloud are unacceptable to the customer, the customer shall have a special right of termination which must be exercised with a notice period of two weeks. The start of the period is the day on which the customer became aware of the change. This right of termination does not apply to the modification and omission of functions which we have made available to the customer within the framework of a beta test. For these, we reserve the right at any time not to continue to offer them or to offer them only in a modified form.
- 8.3. We welcome every suggestion for improvement from a client. As a matter of form, however, we must state that the client transfers to us, free of charge, all rights to his suggestion that are necessary for its possible implementation and any utilisation.

## **9. Non-fulfilment of main performance obligations**

- 9.1. If we are in default with the initial provision of Facelift Cloud, the customer shall be entitled to withdraw from the contract if a reasonable period of grace granted to us has expired fruitlessly, i.e. we have not provided the agreed functionality of Facelift Cloud for the first time within the period of grace.
- 9.2. If, after operational provision of Facelift Cloud, we fail to meet our obligations in whole or in part or if the owed availability of Facelift Cloud for one contractual month is not met, the provisions of the Service Level Agreement shall apply.
- 9.3. We must demonstrate that we are not responsible for the reason for the delayed provision or the shortfall in the availability owed. If the customer has not notified us of the lack of availability of Facelift Cloud, the customer must prove to our satisfaction that we have otherwise become aware of the lack of availability.

## **10. Claims for defects**

- 10.1. In the event of defects in performance, the customer shall be entitled to the statutory rights, whereby we shall decide whether to remedy the defect by rectification or new delivery.
- 10.2. Our strict liability for damages (§ 536a BGB) for defects existing at the time of conclusion of the contract is excluded, unless the defect is a quality assured by us (guarantee, § 276 para. 1 BGB).
- 10.3. A limitation period of one year is agreed for claims for defects. This period does not apply to claims for damages due to the infringement of claims for defects; in this respect the regulations on liability apply.
- 10.4. If the customer notifies us of the existence of a defect and if, as a result of our resulting activity, it turns out that there is no defect in our performance, the customer shall compensate us for our expenses incurred in this respect in accordance with the agreed hourly rates or, in the absence of an agreement, with reasonable hourly rates. This paragraph shall not apply if the non-existence of the defect was not recognisable to the customer when applying the care and knowledge to be expected of him.
- 10.5. Any claims for defects are excluded for functions, services, software or other offers that are expressly made available by us as a beta version, unless we can be accused of intent. The very nature of such beta versions is that they are unfinished and may have defects. Such defects may, for example, result in the loss of data or the functionality of Facelift Cloud. The customer should therefore only use beta versions if the occurrence of such defects does not mean any disadvantage for him, in particular if they cannot cause any damage for which he would like to hold us or third parties liable.
- 10.6. The customer is obliged to notify us immediately of defects in contractual services, in particular defects in Facelift Cloud. Insofar as we were unable to remedy the situation as a result of the omission or delay in notification, the customer shall not be entitled to reduce the agreed remuneration in whole or in part for the corresponding period, to demand compensation for the damage caused by the defect or to terminate the contract extraordinarily on account of the defect without observing a period of notice. The customer shall demonstrate that he is not responsible for the failure to notify.

## **11. Liability**

- 11.1. Liability for intent and gross negligence is unlimited.
- 11.2. In the event of a breach of material contractual obligations due to simple negligence, the amount of liability shall be limited to foreseeable and contract-typical damages. Material contractual obligations are those whose fulfilment makes the proper performance of the contract possible in the first place and on whose compliance the breached party may regularly rely. The limitation period for claims under this paragraph is one year.
- 11.3. Our liability pursuant to paragraph 2 shall be limited per contractual year to the remuneration paid to us by the customer.

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11.4. Paragraph 2 shall not apply to claims arising from injury to body, health or life, in the event of fraudulent conduct, the assumption of a guarantee, liability for initial incapacity or impossibility for which we are responsible, or to claims under the Product Liability Act.

11.5. In all other respects, liability - on whatever legal grounds - is excluded.

## **12. Indemnity**

12.1. If third parties assert claims against us, one of our bodies or one of our employees due to an action or omission of the customer in connection with this contract that is in breach of contract, the customer undertakes to indemnify us, our bodies or our employees against these claims and any resulting damages and costs. The claim for indemnification also includes reasonable costs for the legal examination and defence of the alleged claims.

12.2. We shall inform the customer without delay if third parties assert corresponding claims and grant him the opportunity to cooperate in the defence against the claims.

12.3. Any further statutory claims for damages against the customer shall remain unaffected by the above provisions.

## **13. Data protection**

13.1. The processing of personal data by the Customer via Facelift Cloud shall be governed by the order processing agreement concluded separately with the Customer pursuant to Art. 28 DSGVO.

13.2. In all other respects, we undertake to process personal data which the customer provides to us for the performance of the contract and which are not the subject of commissioned processing in accordance with the applicable data protection regulations.

## **14. Set-off and assignment**

14.1. A contracting party shall only be entitled to exercise a right of retention or set-off insofar as the underlying counterclaim has been legally established or is not disputed.

14.2. The assignment of rights and obligations under this contract or the contract as a whole to a third party is only permitted with the prior consent of the other contracting party. Consent may not be unreasonably withheld.

## **15. Force majeure**

15.1. Each party shall be temporarily released from its obligation to perform as long as it is prevented from performing due to force majeure. This also applies in the event that the party is already in default.

15.2. Force majeure is a corresponding event within the meaning of § 206 of the German Civil Code (BGB) as well as any other unusual and unforeseen event if the party invoking it did not cause the event, could not expect the event to occur, could not influence its occurrence, could not prevent its consequence despite exercising due care and is prevented from rendering performance for this reason. This applies in particular to war, terrorism, riots, pandemics, storms, environmental disasters or if the prevention of performance is otherwise based on government order.

15.3. The party invoking the existence of force majeure shall have

- immediately inform the other party in text form of the fact and the reasons for this;
- with the diligence of a prudent businessman, to take the measures necessary to resume the full performance of its obligations as soon as possible;
- make reasonable efforts to minimise any negative impact on the performance of this Agreement;

## **16. Final provisions**

16.1. This contract contains all agreements of the parties on the subject matter of the contract. Any deviating subsidiary agreements and earlier agreements on the subject matter of the contract are hereby rendered ineffective.

16.2. Amendments and supplements to this contract must be made in writing unless a stricter form is prescribed by law. This also applies to any waiver of the formal requirement.

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- 16.3. The customer's general terms and conditions shall not apply to this contract. This shall also apply if reference was made to their inclusion in later documents in connection with this contract without contradiction.
- 16.4. If any provision of this Agreement is or becomes void, invalid or unenforceable in whole or in part, or if any provision necessary in itself is omitted, the validity and enforceability of all remaining provisions of this Agreement shall not be affected.
- 16.5. The contract shall be governed solely by the law of the Federal Republic of Germany. Private international law shall not be applicable insofar as it is excludable.
- 16.6. The sole place of jurisdiction for all disputes in connection with this agreement is our registered office. We are also entitled to assert claims against the customer at one of his legal places of jurisdiction.
- 16.7. The German version of these Regulations shall prevail.

## **Part II - Service Level Agreement**

Unless the Customer uses Facelift Cloud under a free licence, the following Service Level Agreement shall apply to the use of Facelift Cloud. The Service Level Agreement does not apply to services provided by third parties and, if applicable, offered together with Facelift Cloud.

1. We will use commercially reasonable efforts to ensure an availability of Facelift Cloud at the delivery point (interface to the Internet in the data centre in which Facelift Cloud is operated by us) of 99% per calendar month.
2. Availability is given if Facelift Cloud can be used at the delivery point in accordance with the contract with usual and reasonable response times. We will publish availability issues with notice on our website.
3. Facelift Cloud is also available at
  - 3.1. planned unavailability on weekends and national holidays between 05:00 and 10:00 CET and at other times if we give at least 24 hours' notice of such times;
  - 3.2. in the event of unavailability to rectify errors that significantly jeopardise the secure operation of Facelift Cloud, that could result in a breach of the GDPR or that jeopardise IT security to a greater than insignificant extent. We will give reasonable notice of these where possible.
4. The information of the customer according to paragraph 3 shall be sent by e-mail to the administrator e-mail addresses stored in his customer account.
5. For monitoring and determining the extent of availability of Facelift Cloud, our measurements apply. The customer is able to prove the contrary.
6. In the event that the agreed availability is not met for reasons for which we are responsible, we shall grant the customer a free extension of the contract term by one month in the event of non-availability of up to 20 hours per calendar month in settlement of his claims. If the unavailability exceeds 20 hours per calendar month, the remuneration owed by the customer for the respective calendar month shall be reduced from the 21st hour by 0.25% per hour or part thereof up to a maximum of 5%. Further claims of the customer in case of unavailability are excluded.
7. The customer must assert his claim for compensation within one month by e-mail to the customer advisor assigned to him. This e-mail must be accompanied by a list of which parts of the service were not available during which period. We will then check this against our own records and send our statement to the customer within 10 working days at our registered office. If we acknowledge the claim, we will credit the corresponding amount to the customer with the following invoice, at the latest upon termination of the contract.
8. We provide the customer with customer support via chat and e-mail as listed below in accordance with the support level (bronze, silver, gold, platinum) ordered by the customer. Included in each case is the unlimited use of the knowledge database made available by us via the internet.

### 8.1. Definitions:

NBZ = Normal on-call time, Monday to Friday from 09:00 to 18:00 (CET), except on national or regional public holidays (Hamburg) and 24 and 31 December;

EBZ = Extended on-call time, 24 hours a day;

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		Bronze	Silver	Gold	Platinum
Technical support	Availability (reaction/problem solution according to paragraph 9 and 10)	during NBZ			during EBZ (by arrangement)
	Channels	Chat, e-mail		Chat, e-mail, On demand video calls	
	Authorised users	Administrators			Administrators, standard users
Account Management	Availability	NBZ (by arrangement)			
	Allocated resources	Pool	Dedicated		
	Regular support	-	quarterly	monthly	fortnightly

9. Definitions of urgency levels for customer support, depending on agreed service levels:

- 9.1. Urgency level I: Total failure, Facelift Cloud is not available/accessible; customers cannot continue current operations.
- 9.2. Urgency Level II: Facelift Cloud is available/accessible but significantly impaired, e.g. partial system failure, critical modules unavailable, basic module functions unavailable; customers can only continue ongoing operations with significant restrictions.
- 9.3. Urgency level III: Facelift Cloud is available/accessible but slightly impaired, e.g. layout errors, minor delays in sending data, individual data drops; customers can continue current operations with portable temporary restrictions.
- 9.4. Urgency level IV: Services are fully available/accessible, minor problems are detectable; customers can continue current operations without restrictions.

*The classification into an urgency level is incumbent on us. We will use commercially reasonable efforts to meet the following target response and resolution times from the time we receive the problem report.*

10.

LEVEL OF URGENCY	TARGET PROBLEM RESPONSE TIME	TARGET PROBLEM SOLVING TIME
I	1 h	4 h
II	2 h	1 working day
III	4 h	5 working days
IV	1 working day	case-by-case, upcoming versions

Specified times run only in the NBZ, unless the client is entitled to work in the EBZ.

### **Part III - Regulations for supplementary services**

If contractually agreed, we grant the customer the possibility to use certain services of partners via Facelift Cloud. We are the contractual partner for the partner services agreed with the customer. The use of these partner services shall be subject to the additional provisions contained in the respective contract, if any.

In the event of disruptions to the partner services, we offer the customer the option of contacting the respective service provider directly with support questions. We provide the contact details for this accordingly.

### **Part IV - Individual services**

For the commissioning of individual services for a customer, e.g. customisations of Facelift Cloud, training courses, the following provisions shall apply in addition to Part I.

#### **1. Our services**

The subject of our services are the services commissioned by the customer in each case. We provide these through qualified personnel and according to our current state of knowledge at the time of conclusion of the contract. Changes to the agreed scope of services are possible by supplementary agreement at any time.

#### **2. Rights**

The customer acquires the rights to our services which are necessary for their use in accordance with the contract. Unless otherwise agreed, the transfer of rights is limited in time to the use of the Facelift Cloud by the customer.

#### **3. Dates**

Stated delivery or performance dates are non-binding unless they are expressly designated by us as binding.

#### **4. Cooperation obligations of the customer**

The customer is obliged to fulfil his obligations to cooperate within a reasonable period of time. If we should be dependent on the provision of information, documents, etc. for our services, we shall inform the customer of the corresponding need and, if necessary, indicate a date by which the provision is required for the continuation of the work at the latest. If reasonable deadlines are specified for the performance of a duty to cooperate, exceeding such deadlines shall result in our being able to demand a corresponding adjustment of any deadlines incumbent upon us, insofar as it is not possible for us to meet the agreed deadline without the performance of the duty to cooperate.

#### **5. Deficiencies**

- 5.1. In the event of defects in performance, the customer shall be entitled to the statutory rights, whereby we shall decide whether to remedy the defect by rectification or new delivery.
- 5.2. A limitation period of one year is agreed for claims for defects. This period does not apply to claims for damages due to the infringement of claims for defects; in this respect the regulations on liability apply.
- 5.3. If the customer complains about the existence of defects and if, as a result of the resulting activity of the contractor, it turns out that there was no defect, we shall be entitled to invoice our corresponding expenditure according to the agreed hourly rates or, in the absence of an agreement, according to our general hourly rates.

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