mopinion

General Terms & Conditions

Article 1: Applicability

1.1 For the application of these General terms and conditions the term General terms and conditions shall be taken to mean these General terms and conditions of Mopinion B.V., established in Rotterdam at the address Mariniersweg 151-01 (3011 NK) and its affiliated businesses (hereafter Mopinion). The General terms and conditions have been deposited with the Chamber of Commerce in Rotterdam under number 24459623.

1.2 These General terms and conditions are applicable to all offers and all contracts relating to the provision of services by Mopinion.Mopinion expressly rejects the applicability of any terms and conditions belonging to or on behalf of the client, unless Mopinion has expressly agreed in writing to the application of such terms and conditions.

1.3 The invalidity of a provision in the contract and/or in these General terms and conditions has no effect on the validity of the other provisions of the contract with the client and the General terms and conditions. If and to the extent that a provision in the contract and/or these General terms and conditions is invalid, or should be unacceptable on the basis of reasonableness and fairness in the particular circumstances, a provision shall apply between the parties which, in the light of all circumstances, is reasonable.

Article 2: Provision of services

2.1 Mopinion provides a Software-as-a-Service (SaaS) subscription service, with which the client can collect, analyse and manage online user and/or customer feedback from digital media channels such as websites, mobile applications and/or email marketing campaigns. For the application of these General terms and conditions the term SaaS shall be taken to understand the making and keeping of programs by Mopinion to the client, via Internet or another data network, without the client being provided with the source code(s) of the programs involved. Client shall comply with Mopinion's Fair Use Policy ("FUP").

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Article 3: Creation of contract

3.1 An offer by Mopinion occurs without obligation and can be repealed, withdrawn or amended by Mopinion. Client warrants the accuracy and completeness of data provided by or on his behalf to Mopinion, upon which Mopinion has based its offer. Any errors or omissions arising in an offer, will not be binding on Mopinion.

3.2 An offer made by Mopinion is valid for a period of 30 days following the date of issue. After these 30 days the offer expires, unless otherwise agreed between Mopinion and the client.

3.3 Mopinion can offer the client the option of creating a trial account. A trial account grants the client access to SaaS services from Mopinion for the duration of a period to be agreed between the parties or – if no period is agreed – a maximum of 30 days.

3.4 At the end of the trial period, or at an agreed earlier date, a contract will automatically come into existence between the client and Mopinion. During the period of the trial account the client can make known to Mopinion via an email message to Mopinion that the client no longer wishes to make use of Mopinion's SaaS services following the ending of the trial account. In that case no contract comes into existence between Mopinion and the client.

3.5 The duration of the contract shall be for the period agreed between the parties, or in the absence of any agreed duration, for one year. The duration of the contract will automatically be extended for the duration of the original period, unless the client cancels the contract in writing, subject to a notice period of 60 days prior to the end of the period involved. The responsibility for timely cancellation of the agreement lies entirely with the client.

3.6 By entering into an agreement with Mopinion the client acknowledges the services are used for business purposes only and not for private use.

Article 4: Prices

4.1 The prices and tariffs charged by Mopinion are exclusive of turnover tax (VAT/ Dutch: BTW) and any other government imposed taxes and duties.

4.2 The prices agreed between Mopinion and the client can be adjusted once each year, starting one year after the date of entry into contract, in case of changes to third party products and/or services and by the percentage increase over the previous 12 months in the Consumer price index (CPI) of the CBS.

Article 5: Payment

5.1 The client will pay all invoices in full in accordance with the payment conditions stated on the invoice. In the absence of specific conditions the client will pay within 30 days of invoice date. The client is not entitled to defer or set off any payment obligations.

5.2 As soon as the period referred to in clause 1 or any other period agreed between the parties has been exceeded, the client is in default by operation of law, without the requirement of any further notice of default. In that case all Mopinion's claims against the client will become immediately enforceable and Mopinion is entitled to payment of interest compensation on the amount of the claims, which interest shall amount to 1% per month or part month, and is without prejudice to Mopinion's right to seek full compensation for damages. Mopinion reserves the right, if the client is in default, to engage third parties to enforce the claims, in which case the client will become liable, in addition to the total amount then owed, for payment of out-of-court collection costs and litigation costs, including legal and attorney costs, amounting to no less than 15% of the gross invoice value, subject to a minimum of € 200,00 (excluding VAT/Dutch: BTW).

Article 6: Quality of Service and Support

6.1 Mopinion will make commercially reasonable efforts to respond to all incoming Support requests within two Business Days.

6.2 On request, we only offer users on our Enterprise plan a SLA with 99% uptime guarantee and high priority support requests.

Article 7: Retention of title

7.1 All goods delivered to the client on the basis of a contract (including customer feedback) remain the property of Mopinion until all payments which the client is liable for in respect of the services provided or to be provided based on the contract have been made in full to Mopinion. User rights are granted or assigned at all times to the client on the condition that the client makes timely and full payment of the agreed fees. If the parties have agreed to a periodic obligation to make payment for the granting of user rights, the client is entitled to the user rights for as long as he complies with his periodic payment obligation.

7.2 If the ownership of goods delivered or user rights has been transferred to the client at the end of the contract between the parties, Mopinion will offer the client an appropriate opportunity to take over the customer data. Thereafter the data will be deleted by Mopinion.

Article 8: Confidential information and Privacy

8.1 Each party will take all reasonable precautions in order to ensure that confidential information received from the other party is kept secret. In the absence of prior written consent parties are prohibited from disclosing confidential information to third parties in any way, except to the extent that an obligation to disclose arises on the basis of a legal provision or in compliance with a court order.

8.2 Mopinion will take all reasonable precautions to ensure the optimum security and protection from unlawful use of personal data belonging to the client. Only authorised personnel have access to the data. The storage and transmission of the client's data via the Internet are protected by techniques that are currently in general use.

8.3 Mopinion will not make the client's data available to third parties in any way. If he wishes, client has the right to inspect and to correct personal data if necessary.4. Parties shall process Personal Data in accordance with the General Data Protection Regulation (in Dutch: Algemene Verordening Gegevensbescherming) if the General Data Protection Regulation is applicable. If and when applicable the Parties hereby acknowledge that Mopinion is a data processor and client is a data controller. Further rights and obligations are agreed by parties in the separate Data Processing Agreement.

8.4 Mopinion applies a Privacy Statement, which can be consulted on its website. Upon the creation of a contract between the parties, client declares himself to be in agreement with the content of Mopinion's Privacy Statement.

8.5 The client shall use the Mopinion services only for the intended purpose of collecting and analyzing customer feedback and not for any other use, specifically not the processing of sensitive and/or high risk and/or financial and/or medical data.

Article 9: Intellectual property

9.1 All intellectual and industrial ownership rights, including all patents, trademarks and authors rights, together with all such rights relating to the services delivered (which shall also be understood to include analyses, designs, documentation, reports, offers, and other preparatory material), remain the exclusive rights of Mopinion, except to the extent that the parties have expressly agreed otherwise in writing. The Mopinion reserves the exclusive right to exercise the said rights.

9.2 Client is not permitted to remove or change any reference relating to authors rights, trademarks, brand names, or other rights of intellectual or industrial property from the web application, apparatus or materials, including references relating to the confidential nature and preservation of secrecy of the web application.

9.3 Mopinion is permitted to take technical measures to protect the web application. If Mopinion has protected the web application by means of technical measures, client is not permitted to remove or evade this protection. If the security measures result in the client being unable to make a backup copy of the web application, Mopinion will make a reserve copy of the web application available to the client, upon request.

9.4 Mopinion indemnifies the client for any liability to third parties claiming that software developed by Mopinion infringes any ownership rights of the third-party which apply in the Netherlands, on condition that the client immediately informs Mopinion in writing of the content of the claim and assigns the entire handling of the case to Mopinion. The duty to indemnify ceases to apply if the claimed infringement is connected to changes made by or on behalf of the client.

Article 10: Use

10.1 Mopinion will provide client with the services in the area of SaaS that are set out in the contract between the parties, together with any other services agreed between the parties. Client is not permitted to use the services offered by Mopinion in any way other than as agreed between the parties. If client – without the prior consent of Mopinion – deviates from the user rights set out in the contract, Mopinion is entitled to obtain reimbursement from the client for any resulting costs or damage suffered.

10.2 Mopinion is not responsible for the procurement and/or good operation of the client's infrastructure, or that of third parties. Unless expressly otherwise agreed in writing, client is responsible for the management, including control of installations, the use of the service, and the way the results of the service are used. In the absence of any express agreement, client will install the necessary (supporting) software on his own apparatus, and if necessary will adapt the additional apparatus used, other (supporting) software and the user environment, in order to realise the interoperability desired by Mopinion. Mopinion is not responsible for any adverse consequences that this may give rise to.

10.3 The client is not permitted:

a) To copy the web application in whole or in part, in any way, irrespective of form or medium.

b) To remove or change any identifying features such as brand names, visual marks, product names, and notices of authors rights.

c) To change, adapt, convert, imitate or in any other way to process, or to apply reverse engineering to the web application in whole or in part, or to permit any of these to be carried out by third parties.

d) To hire out, to dispose of, to assign as security, or to make available to third parties on any basis whatsoever, to allow inspection of the web application or make it accessible to third parties, which shall be understood to include administering data belonging to persons other than the client.

e) To transfer the web application in whole or in part electronically or by means of telecommunication to another website.

10.4 Client is bound to take all reasonable measures to prevent the web application wholly or partly coming into the hands of third parties.

Article 11: Maintenance

11.1 Mopinion will perform its periodic updates with due diligence.

11.2 Mopinion can introduce changes to the size or content of the web application. These changes may have consequences for the required specifications of the apparatus and/or website used. Any adverse consequences arising from this are at the risk and expense of the client.

Article 12: Duties of the client

12.1 Mopinion is dependent on the quality, completeness and timeliness of provision of data or information by the client. If data which is necessary for the performance of the contract is not made available to Mopinion or is not made available on time or in accordance with what has been agreed, or if client fails in some other way to meet his duty to provide information, Mopinion has the right to suspend performance of the contract and if applicable to charge for any extra costs in accordance with Mopinion's usual tariffs. Mopinion is in no circumstances liable for direct or indirect damage resulting from the defective quality of the said information.

Article 13: Guarantee

13.1 Mopinion does not guarantee that software made available and kept available for the client in the context of SaaS will be free of any fault and will function without interruption. Clients accepts the software and use of the SaaS services "as is", with all properties and both visible and invisible, except for defects due to specifically guaranteed properties.

13.2 Mopinion will make every effort to remedy any such defects in the software within a reasonable period of time if and to the extent the software has been developed by Mopinion itself and the defects involved have been reported to Mopinion in detail, in writing. Mopinion can in a particular case delay remedying the defects until a new version of the software is brought into use. Mopinion does not guarantee that software which has not been developed by Mopinion will be put right. Mopinion is entitled to introduce temporary solutions or program bypasses or problem reducing limitations into the software.

Article 14: Liability

14.1 Mopinion is not liable for any form of direct or indirect damage suffered by the client, including consequent damage, business loss and damage due to loss of time or any missed financial benefit, except in the case of a deliberate act or omission, or wilful recklessness. Mopinion will in no circumstances be liable for compensation for damage to the extent that the amount of the damage exceeds the amount, excluding B.T.W. and other duties imposed by government, that Mopinion has invoiced the client in the year prior to the event(s) causing the damage.

14.2 Client indemnifies Mopinion and its legal successors and employees for all liability to third parties relating to the contract and the software delivered by Mopinion including (but not limited to) claims relating to unlawful and irresponsible handling by the client of personal data among the customer data collected using Mopinion's software.

Article 15: Force majeure

15.1 In the case of force majeure on the part of one of the parties the performance of the contract will be wholly or partly suspended for the duration of the period involved. If circumstances arise which are of such a nature that the performance of the contract becomes impossible or burdensome and/or disproportionately costly to such an extent that performance of the contract can no longer reasonably be demanded, Mopinion is entitled to annul the contract, without Mopinion becoming liable to pay any compensation for damages.

Article 16: Termination for convenience of contract

16.1 Mopinion is entitled at its own choice to wholly or partly suspend or terminate performance of the contract unilaterally by way of written notice, without legal intervention, and with immediate effect, without Mopinion becoming liable to pay any compensation for damages, on the occurrence of any of the following events:

a) any security for fulfilment of the contract by the client which is requested upon entering into the contract is not provided or is not provided in full;

b) (a suspicion of) a failure by the client to observe his obligations under the contract, FUP and/or the General terms and conditions;

c) a failure by the client to meet its obligation to make timely payment to Mopinion either fully, or within the ruling payment period;

d) (a request for) deferral of payment or a declaration of bankruptcy on the part of the client;

e) the appointment of a trustee or an administrator for the client;

f) the sale, pledging or termination of the business of the client;

g) seizure of a significant part of the business resources of the client;

h) the trading practices of the client are not compatible, in our own judgement, with our norms and values.

16.2 Apart from the cases referred to in article 16.1 Mopinion is at all times entitled to terminate the agreement subject to a notice period of 8 weeks, without Mopinion becoming liable to pay any compensation for damages.

16.3 In the circumstances stated in article 16.1 above, all claims that Mopinion may have or obtain in respect of the client will become immediately enforceable.

16.4 Mopinion is at all times entitled to set off its obligations in respect of the client wholly or partly with any claims that Mopinion has or shall obtain on the client, at any time, whether or not enforceable, conditional or subject to any time stipulation. Set off by the client is excluded under all circumstances.

Article 17: Amendments

17.1 Mopinion may make amendments to these General terms and conditions. In case of an amendment, Mopinion will give client at least 30 days notice thereof. An amendment will be considered to be accepted by client and will enter into force on the date determined by Mopinion if client does not reject the amendment within 30 days following the notification thereof. If client rejects the amendment, Mopinion will be entitled to terminate the contract by giving at least 30 days notice of termination with effect from the end of a calendar month.

Article 18: Applicable law

18.1 Dutch law is applicable to all contracts entered into between Mopinion and the client. All disputes between Mopinion and the client are subject to the exclusive jurisdiction of the competent court in Rotterdam, the Netherlands.