

eKomi

General Terms and Conditions

These General Terms and Conditions (these “**GTC**”) is by and between the eKomi entity as specified on the Order Form (“**eKomi**”) and the Company as specified on the Order Form (“**Company**”).

eKomi develops and operates professional feedback solutions. By implementing this system, the Company can gather genuine customer feedback from their End Users about their products and services (collectively, the “**eKomi Customer Feedback System**”).

By signing the Order Form, the Company agrees to these GTC. The following sections regulate the terms under which the eKomi Customer Feedback System is made available to the Company.

1. Definitions

1.1. “**Certificate Page**” is the company specific site that shows the Ratings & Reviews received, the Seal and the Company’s contact data.

1.2. “**Customer Backend**” is a login protected customer area where the Company can view the Ratings & Reviews, start dialogues with the End User, leave a comment under the reviews received, change the account settings, setup the email template and download scripts for the integration of the Widget and the Seal.

1.3. “**eKomi Customer Feedback System**” is eKomi’s proprietary technology, software, tools, files, know-how and processes.

1.4. “**Order Form**” means a transactional contract that is entered into pursuant to these GTC by and between eKomi and the Company.

1.5. “**Review Guidelines**” are the eKomi Review Guidelines aimed at ensuring that Ratings & Reviews do not infringe applicable laws and are available on eKomi’s website.

1.6. “**Ratings & Reviews**” are transaction-based star ratings and review texts written by End Users and collected and published through the eKomi Customer Feedback System.

1.7. “**Seal**” is the eKomi Seal awarded to the Company based on the average Ratings & Reviews received. The Seal may either award gold status for average ratings from 4.8 and above, silver status for average ratings between 4.4 and 4.7, bronze status for average ratings between 4.0 and 4.3 or the standard Seal for average ratings below 4.0 or with less than 50 Ratings & Reviews (“**Widget and Seal Award Criteria**”) and is available in the eKomi Customer Backend.

1.8. “**End User**” is one who leaves Ratings & Reviews.

1.9. “**Widget**” is a combination of the Seal and selected randomly displayed Ratings & Reviews, available in the eKomi Customer Backend in different designs.

2. Contract Commencement

2.1. The GTC only applies to legal entities, commercially active persons with unlimited capacity to enter into legal transactions, self-employed persons or companies or any artificial person.

2.2. The Company applies to use the eKomi Customer Feedback System by submitting the Order Form. By signing the provided Order Form, the Company declares that the activity in question is of commercial or independent professional character. The data requested during the application (mandatory fields) must be provided truthfully. The application may be submitted by mail to the European Headquarter “eKomi Limited, Markgrafenstr. 11, 10969 Berlin, Germany”, via fax to “0049 30-2000 444 211” or via email to “registration@ekomi.co.uk”. By agreeing with the GTC and by submitting a duly signed form by mail, fax or email, a legally binding contract is formed between the Company and eKomi. The date of the Company’s signature determines the contract commencement.

3. Services Rendered by eKomi

3.1. eKomi distinguishes between different standard service packages with different service levels that are made available to the Company by eKomi during the term of the GTC.

3.2. eKomi reserves the right to change, amend or discontinue the scope of the standard service packages. In case of such change, the scope of service remains valid as agreed at the time of contract commencement unless otherwise agreed.

3.3. All eKomi customer reviews submitted are checked by the eKomi Customer Feedback Management team for compliance with the eKomi Review Guidelines and are incorporated into the Certificate Page of the Company.

4. Access, License, Ownership Rights

4.1. **Access Rights.** After contract commencement and during the term specified in the Order Form, eKomi grants the Company access to the Customer Backend and to the eKomi Customer Feedback System. The eKomi Customer Feedback System enables the Company's End Users Ratings & Reviews to be collected, managed and displayed. These access rights cease with the effective date of an ordinary or extraordinary termination of the contract by eKomi.

4.2. **Company's License.** Subject to the provisions of the GTC and for the term as defined in the Order Form the Company grants eKomi during the contract duration, a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free worldwide license to use, copy and publicly display the Company's name and logo solely for the purpose of providing the services under the GTC and for reference purposes.

4.3. **eKomi's License:** Subject to the provisions of the GTC and for the term as defined in the Order Form, eKomi grants to the Company a limited, non-exclusive, non-transferable, non-sublicensable license to use eKomi's Widget and Seal in accordance with the GTC, which are awarded in accordance with the Widget and Seal Award Criteria. The Widget, as well as the Seal is part of the eKomi Customer Feedback System. In case of an extraordinary termination of the contract by eKomi, the eKomi license ceases with the effective date of this termination.

4.4. **Ownership Rights.** eKomi shall own and retain all rights, titles and interests in the eKomi Customer Feedback System. Except for the license granted by eKomi to the Company according to section 4.3, nothing in these GTC shall be construed in a way to transfer to the Company any rights, titles or interests in or to eKomi's property. In addition, eKomi has the exclusive right to use the Ratings & Reviews and is entitled to publish the Ratings & Reviews in search machines and social media.

The Company is granted a revocable permission by eKomi to make use of the eKomi Seal, Ratings & Reviews collected during the course of the contract for advertising purposes under the following conditions:

- Ratings display must conform to the current rating status of the business or corporate division as stored in the eKomi Customer Feedback System with the appropriate date and designation of the business or corporate division clearly indicated.
- The wording of reviews must not be changed and the Company has to refrain from any acts to use reviews in a way that could create a false impression about its current rating status and/or could mislead consumers to a wrong action.
- The eKomi Seal can be used for advertisement purposes, after a written permission by eKomi was granted. The Seal has to be accompanied with a date indicator e.g.10/09/14 and the Company has to refrain from any acts to use the Seal in a way that could create a false impression about its current rating status and/or could mislead consumers to a wrong action.

5. Duties of the Company

5.1. If the contact and business data provided by the Company during the application changes, the Company is obliged to immediately notify eKomi about these changes in writing.

5.2. The Company is not permitted to use the eKomi Customer Feedback System, including the Widget and Seal, in a misleading manner; the rating excerpt and rating portrayed must match the current eKomi rating status. The Company may not draft reviews itself or engage third parties to draft reviews on its behalf. The Company may not undertake any measures aimed at preventing neutral or negative impressions from flowing into the eKomi Customer Feedback System. Furthermore, the Company is obligated not to modify or falsify the customer reviews obtained as a result in any way whatsoever. The Company is obligated to enable the transaction based feedback assessment to all End Users or a clearly defined group of End Users. If only a defined group of End Users are invited to leave Ratings & Reviews, such selection criteria must be clearly described on the Certificate Page.

5.3. The Company shall abstain from any activities aimed at rendering the eKomi Customer Feedback System unusable, manipulating it or hampering its use.

5.4. The Company must report any operational failures of the eKomi Customer Feedback System immediately to eKomi. Should the operational failure of the eKomi Customer Feedback System be within the Company's realm of responsibility and require a re-implementation of the eKomi Customer Feedback System, a re-implementation fee according to the schedule of charges will be charged.

5.5. The Company is obligated to protect the eKomi access data (username, account password and interface password) against unauthorized use by third parties and to maintain the confidentiality of such data. The Company must immediately notify eKomi in writing if it has just cause for suspecting an instance of misuse.

5.6. The Company is not permitted to make available for download, offer or disseminate content which violates international, federal, state and local laws on web pages in which the eKomi Customer Feedback System is integrated. This especially applies to discriminatory, racist, offensive or pornographic content or content that glorifies violence.

5.7. The Company is responsible for ensuring compliance with applicable data protection laws. In addition, the Company alone is responsible

- i. for the manner in which End Users are approached and informed about the possibility of leaving Ratings & Reviews;
- ii. to assess the legal permissibility of the advertisement (including its manner) of the products and/or services of the Company, in particular under competition and advertisement laws; and
- iii. to assess the requirements under competition, data protection and other relevant laws and for obtaining the required consent from the End User.

EKOMI ACCEPTS NO LIABILITY FOR DAMAGES RESULTING OUT OF A VIOLATION OF THE DUTIES DESCRIBED ABOVE.

5.8. In principle, eKomi does not delete or change Ratings & Reviews by an End User

- i. unless the review text violates the Review Guidelines in which case the relevant text will be censored and the star rating remains visible,
- ii. eKomi is compelled to delete or amend Ratings & Reviews as a result of a court order or the order of a competent authority,
- iii. to address misuse of the eKomi Customer Feedback System, or
- iv. under circumstances that reasonably require eKomi to intervene into its Customer Feedback System.

If a fraudulent use is determined, eKomi is entitled to immediately delete the Ratings & Reviews concerned.

6. Consequences of Improper Use

6.1. If eKomi reasonably believes that the Company has violated the duties described in sections 4 and 5, eKomi is entitled to immediately block access, either partially or completely, to the eKomi Customer Feedback System, to technically prevent the display of the Certificate Page on the Company's web pages and to terminate the contract without notice as set out in section 8.2. This will not affect the right of eKomi to claim damages or any other rights it might have at the time of contract commencement.

6.2. The Company is liable for any direct damages done to eKomi and her affiliates that are attributable to any violations described in sections 4 and 5 as well as any other improper use of the eKomi Customer Feedback System.

7. Confidentiality

7.1. Each party shall keep Confidential Information strictly confidential and shall not, without the disclosing party's prior written consent, disclose the other party's Confidential Information except as set forth herein. **"Confidential Information"** means

- i. all software, technology, know-how and documentation relating to making available or using the eKomi Customer Feedback System or
- ii. any other information made available by the disclosing party to the receiving party that is marked confidential or would normally be considered confidential under the circumstances in which it is presented.

Confidential Information does not include information

- i. already known by the receiving party prior to making available or using the eKomi Customer Feedback System;
- ii. that becomes public through no fault of the receiving party;
- iii. that was independently developed by the receiving party;
- iv. that was lawfully given to the receiving party by a third party; or
- v. that is required by law to be disclosed by the receiving party, provided that the receiving party shall give the disclosing party written notice of such requirement prior to disclosing, so that the disclosing party may seek a protective order or other appropriate relief.

7.2. Each party agrees that it will take reasonable precautions to protect the confidentiality of such Confidential Information; such precautions must be at least as restrictive as the precautions it takes to protect its own Confidential Information. Each party agrees to disclose Confidential Information only to employees who need to have knowledge of the Confidential Information and who have executed a written non-disclosure agreement in content similar to the provision hereof, prior to any disclosure of the Confidential Information.

7.3. Personal data that is transmitted to eKomi will be exclusively used per the executed contractual relationship and related purposes such as fraud prevention, storage, encryption and data usage. This data will not be shared with unaffiliated third parties. eKomi represents and warrants that its collection, access, use, storage, disposal and disclosure of Personal Information does and will comply with all applicable privacy laws in accordance with the European Data Protection Directive 95/46/EC & Directive 2002/58/EC.

8. Contract Term and Termination

8.1. The contract is concluded once the Company has signed and sent the Order Form to eKomi and hereby agreed to the GTC. The date of the signature on the Order Form by the Company determines the contractual commencement. The contract term and the obligation to pay starts with the completion of the technical implementation (allowing the Company's End Users to leave Ratings & Reviews), or, at the latest, four weeks after contract commencement for services as ordered by the Company. The Company is obliged to allow eKomi a quick and efficient implementation of the services ordered, and is obliged to name a contact person, dates and submit other information required for the technical implementation. If the implementation is not possible within four

weeks after contract commencement, through no fault of eKomi, then the obligation to pay shall begin four weeks after the contractual commencement. If the Company wishes to start the implementation period at a date different from contract commencement, this must be made clear in writing in the Order Form. In this case, the obligation to pay shall begin with the completion of the technical implementation (allowing the Company's End Users to leave Ratings & Reviews) and at the latest four weeks after the specified start date of the implementation period.

8.2. The minimum contract term for paid eKomi services is 12 months. The contract may be terminated by providing notice at least 30 days before the end of the contract term. If the contract is not terminated within this period, the contract term will be automatically extended on each occasion by 12 months. Notices of termination must be sent by mail to the European Headquarter to "eKomi Limited, Markgrafenstr. 11, 10969 Berlin, Germany", via fax to "0049 30-2000 444 998" or via email to "cancellation@ekomi.co.uk". The right to extraordinary terminate the contract without notice for cause remains unaffected. In particular, but not limited to, cause for extraordinary termination by eKomi exists if the Company violates its duties as specified in sections 4 and 5 or is in arrears with payment of at least two monthly fee instalments. In case of an extraordinary termination by eKomi, any outstanding invoicing amount up until the end of the contract period will immediately be due in the full amount.

9. Prices, Billing and Payment Conditions

9.1. With the beginning of the billable contract year, the Company will pay the usage fees according to the written agreed scope of the ordered eKomi service according to the agreement made between the Company and eKomi. The Payment of the fees is to be settled on or by the agreed deadline mentioned on the invoice. All software modifications, re-implementations or any adjustment of the Company's implementation of the eKomi services, that are not the fault of eKomi, must be paid for by the Company in line with a schedule of charges. When the agreed transaction volume has been exceeded, the company shall pay a volume-based fee according to the written agreed scope of the ordered eKomi service according to the agreement made between the Company and eKomi, which will be billed in the following month with a separate invoice. This also applies to companies that have agreed to an annual advance payment. The amount of the monthly usage fee and of the transaction volume fee will depend only on the agreed monthly order fees that were previously written in the agreed scope of the ordered eKomi service according to the agreement made between the Company and eKomi.

9.2. Upon contract commencement, the Company irrevocably authorises eKomi to collect the payments due through its payment provider Novalnet AG. If eKomi cannot collect the amount due as a result of insufficient funds, eKomi is entitled to charge a fee in line with the schedule of charges to cover processing and bank charges. In case of delays in payment, eKomi is also entitled to charge fees in line with the schedule of charges.

9.3. To reduce its credit risk, eKomi retains the right to reduce the choice of payment options.

9.4. The set-up fee invoice shall be settled upon receipt according to the payment terms described on the invoice. The same applies to the monthly usage fee, unless agreed otherwise in writing. Only the time when payment is received is of importance. In case of an agreed annual payment as described in section 9.1., the annual invoice shall be settled upon receipt according to the payment terms described on the invoice. The same applies to the volume-based fee as well as any claimed fees during the contract as described in section 9.1.

9.5. eKomi expressly reserves the right, for reason of non-payment by the Company, to terminate the rating profile of the Company and to discontinue services.

9.6. In case the Company grants eKomi a SEPA mandate for payment in EUR, payment will occur by direct debit from the bank account of the Company. The debiting of the purchase price of the Company's account occurs one business day after the order is completed by eKomi's payment provider Novalnet AG, Gutenberg Strasse 2, 85737 Ismaning, under the creditor-ID: DE53ZZZ0000004253. The deadline for the preliminary announcement (pre-notification) is shortened to 1 day. The Company covenants to provide for the funds in the account. Costs incurred due to non-payment or reversal of the debit will be charged to the Company as long as the non-payment or the reversal was not caused by eKomi.

9.7. The right for the Company to use the eKomi services will be no longer available with immediate effect, in the case of an extraordinary cancellation by eKomi.

10. Warranty, Liability and Indemnification

10.1. **Warranty.** eKomi warrants that the eKomi Customer Feedback System and/or related products and services are the intellectual property of eKomi and do not violate the rights of any third party.

10.2. **WARRANTY DISCLAIMER.** EXCEPT FOR THE WARRANTIES EXPRESSLY GIVEN BY EKOMI IN THE GTC, EKOMI MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESSED, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND APPLICABILITY FOR A PARTICULAR USE. THE EKOMI CUSTOMER FEEDBACK SYSTEM IS PROVIDED BY EKOMI "AS IS". EKOMI DOES NOT WARRANT THAT THE EKOMI CUSTOMER FEEDBACK SYSTEM WILL BE AVAILABLE AND ACCESSIBLE AT ALL TIMES AND FREE FROM ERRORS. DELAYS OR INTERRUPTIONS IN ACCESS OR TRANSMISSION MAY OCCUR AS A RESULT OF TECHNICAL CIRCUMSTANCES OVER WHICH EKOMI HAS NO CONTROL.

10.3. **Liability.** eKomi is liable for any damages caused by it or its employees intentionally or through gross negligence.

10.4. **EXCLUSION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, NON-FORESEEABLE, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST DATA OR LOST PROFITS ARISING FROM THE PERFORMANCE OF THE GTC. ANY TECHNICAL INFORMATION PROVIDED BY EKOMI OR CONSULTANCY SERVICES RENDERED WHICH ARE NOT INCLUDED WITHIN THE CONTRACTUALLY AGREED SCOPE OF SERVICES OF EKOMI ARE PROVIDED FREE OF CHARGE AND TO THE EXCLUSION OF ANY LIABILITY. EKOMI CANNOT BE MADE RESPONSIBLE FOR ANY FALL IN OR STAGNATION OF SALES FOLLOWING IMPLEMENTATION OR FOR NEGATIVE RATINGS & REVIEWS. SOFTWARE ERRORS, ANY SERVER BREAKDOWNS AND THEIR CONSEQUENCES CAUSED BY THE INSTALLATION OF THE EKOMI CUSTOMER FEEDBACK SYSTEM OR OTHER COMPARABLE CONSEQUENCES ARE ALSO EXCLUDED FROM LIABILITY. EKOMI IS NOT LIABLE FOR SERVICES OR PRODUCT FUNCTIONALITIES OF THIRD PARTIES.

10.5. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL EKOMI'S TOTAL, CUMULATIVE LIABILITY (INCLUDING INDEMNIFICATION COSTS, IF ANY) EXCEED THE TOTAL AMOUNT PAYABLE OR PAID BY THE COMPANY (IN THE AGGREGATE) FOR THE PERFORMANCE OF THE SERVICES COVERED BY THESE GTC.

10.6. **Indemnification by the Company.** The Company shall indemnify, defend and hold harmless eKomi from and against any and all damages, liabilities, costs and expenses (including reasonable attorney fees) related to any action, suit, claim or proceeding made, brought or threatened by a third party against eKomi arising out of or in connection with any breach of the Company's obligations under the GTC.

10.7. **Indemnification by eKomi.** eKomi shall indemnify, defend and hold harmless the Company from and against any and all damages, liabilities, costs and expenses (including reasonable attorney fees) related to any action, suit, claim or proceeding made, brought or threatened by a third party against the Company arising out of or in connection with an actual or alleged breach of eKomi's representations and warranties in this section 10.

10.8. **The indemnification obligations** of this section 10 are contingent on the indemnified party

- i. giving prompt written notice of any such claim to the indemnifying party,
- ii. providing reasonable cooperation in the defence and all related settlement negotiations to the indemnifying party, and
- iii. agreeing that the indemnifying party shall have sole control over the litigation or settlement of such claim.

11. Concluding Provisions

- 11.1. The place of jurisdiction for any disputes ensuing from the business relationship between eKomi and the Company is London, United Kingdom.
- 11.2. These GTC are governed by the Laws of the United Kingdom, without regard to the conflicts/choice of law provisions of any jurisdiction.
- 11.3. Each provision of the GTC is severable from all other provisions, and if one or more of the provisions of the GTC is or shall become invalid, the remaining provisions shall remain in full force and effect. If one clause is or shall become invalid, it must be replaced with a valid provision that comes closest to the invalid provision's meaning and intention.
- 11.4. Any declarations and terminations regarding the contract are only valid if they are received in writing.
- 11.5. eKomi shall inform the Company in writing about any changes of these GTC. These changes are deemed to be confirmed by the Company unless the Company disagrees in writing. eKomi shall explicitly inform the Company about this right to disagree. To effectively disagree, the Company has to inform eKomi in writing within two weeks.