

# General Business Conditions

Edition December 2018



Client may order project, SaaS, and other services ("Services") available from Tsquared Insights SA, in Switzerland ("Tsquared"), using these general business conditions. Details regarding Services may be provided in a frame agreement, together with contracts, orders, quotes, attachments or schedules (together "Orders"). These general business conditions and applicable Orders are the complete agreement (Agreement) regarding transactions under this Agreement.

## Services

Services are provided remotely. Each party shall collaborate timely and adequately with the other. Services are project (one off) or subscription (recurring) report-based, SaaS, or as described in an Order.

## SaaS Services

SaaS Services are designed to allow Client to generate market insights analytics, such as consumer trends and behavior patterns. Such insights are generated by Tsquared provided tools and queries accessing data, via a portal and through subscription rights specified in the Agreement.

SaaS Services are placed in a cloud environment hosted by a third party, managed by Tsquared and are designed to be available 24/7, subject to maintenance. Client shall be notified of scheduled maintenance. Client shall comply with instructions that Tsquared or the cloud provider may reasonably request. Client is responsible for use of SaaS Services and for anyone accessing Services with Client's account credentials. ID and passwords are personal and are not transmittable to anyone.

Tsquared may modify the computing environment used to provide the SaaS Services, without degrading its functionality or security features. Should a modification degrade the functionality or security features (as for example due to a change in law) the Client will have the right to terminate the involved Services with 30 days written prior notice, without any termination charges.

Services may not be used for unlawful, obscene, offensive or fraudulent content or activity, in any jurisdiction for any user, such as advocating or causing harm, interfering with or violating the integrity or security of a network or system, evading filters, sending unsolicited, abusive or deceptive messages, viruses or harmful code, or violating third party rights. Furthermore, Client may not resell any report or access to SaaS Services to a third party outside its Group (defined as 'Client owned companies with over 50% of voting shares').

## Data and Intellectual Property Rights

Tsquared retains full ownership and intellectual property rights in all techniques, methodologies and know-how in connection with the Services (including, without limitation, all databases, codes, processes, tools, models, formulae, algorithms, products and interpretation data).

Any ownership and intellectual property rights in any pre-existing Client provided materials shall remain vested on Client or its third parties. Upon receipt of all due payments, the rights of use, under copyright law, for the output and materials provided by Tsquared shall pass to the Client, only for the purpose of the Agreement and solely for Client's internal group purposes.

Tools provided are designed not to give Client access to Tsquared raw data. The Client may not try to access, copy, perform, sublicense, distribute, or otherwise use Tsquared raw Data, outside of the standard output the tools are meant to provide.

Tsquared provided data is designed so as to exclude any personal data, and so that no person can be identified when using Tsquared provided data.

## Warranties

Tsquared warrants that it provides Services using reasonable care and skill in accordance with the ICC/ESOMAR International Code on Market and Social Research. These are the exclusive warranties that apply and replace any other, including implied warranties (as those of the Code of Obligations), noninfringement, fitness for a particular purpose, uninterrupted or error-free operation of Service, correction of all defects, that predictive data is accurate, third party disruptions or unauthorized third-party access to a Service.

## Charges, Taxes and Payment

Client shall pay all charges mentioned in the Orders, and any applicable charges for use in excess of subscription authorization, tax, or fee imposed by any authority under this Agreement, and in case of late payment, a late payment fee of 8 % annually, prorated from the invoice due date until the effective received payment date. Order amounts are mentioned excluding VAT.

The Order shall specify payment details. Per default, SaaS recurring charges and subscriptions amounts are due in advance, and all amounts are due upon receipt of the invoice and payable within 30 days of the invoice date.

Tsquared reserves its rights to adjust recurring charges with 3 months written notice. Any such adjustment will not apply retroactively but shall always apply for the next renewal period.

Client shall reasonably cooperate upon request with Tsquared in case of request by Tsquared or its suppliers' auditor to verify Client's compliance with subscriptions usage and metrics, and promptly order any required entitlements, pay additional charges at then current rates (including uses in excess of Client's authorizations or entitlements, and associated maintenance), and other liabilities determined as a result of such verification.

## Liability

Tsquared's entire liability for all claims related to the Agreement will not exceed the amount of any actual direct damages incurred by Client, up to the greater of: (i) CHF 100'000.- (in equivalent contract currency), or (ii) the last 4 months' charges if recurring; for the service that is the subject of the claim, regardless of the basis of the claim. This limit applies collectively to Tsquared, its contractors, and suppliers. Tsquared will not be liable for special, incidental, exemplary, indirect, or economic consequential damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.

Tsquared has no responsibility for claims based on items not provided by Tsquared, or any violation of law or third-party rights whether or not caused by Client's content, materials, or inadequate use of the Services.

## Duration and Termination

The Order shall specify its duration.

Tsquared may suspend, revoke or limit Client's use of a SaaS Services if Tsquared determines there is a material breach of Client's obligations, a security breach, or a violation of law. Charges will continue to accrue during any suspension. If the cause of the suspension can reasonably be remedied, Tsquared shall provide notice of the actions Client must take to reinstate the SaaS Services. If Client fails to take such actions within a reasonable time, or if unable to resolve, Tsquared may terminate the SaaS Services with immediate effect.

Either party may terminate without cause this Agreement upon 30 days' written prior notice to the other. In such case, any Order shall continue to survive until expiry, but no new Orders shall apply, Tsquared shall continue to provide Services as specified in surviving Orders, and Client shall continue to pay all due charges for such Services until the expiry date of each surviving Order.

Either party may terminate the Agreement immediately for cause if the other is in material breach of the Agreement, provided the one who is not complying is given written notice and a reasonable time to comply. Any terms that by their nature extend beyond the Agreement termination remain in effect until fulfilled and apply to successors and assignees.

#### **Governing Law and Geographic Scope**

Each party is responsible for complying with laws and regulations applicable to its business and content: import, export; economic sanctions; and transfer of data restrictions.

Both parties agree to the application of the laws of Switzerland to this Agreement, without regard to conflict of law principles. All rights, duties, and obligations are settled exclusively by the competent court of Geneva. If any provision of the Agreement is invalid or unenforceable, the remaining provisions shall remain in full force and effect. Nothing in the Agreement affects statutory rights that cannot be waived or limited by contract.

#### **General**

If the parties have entered into a separate agreement on confidentiality arrangement, such shall prevail over the following sentence: Is considered confidential information any other party's confidential or proprietary information which are not generally known to the public (including reports), and neither party shall disclose any confidential information of the other party outside its group companies, without a prior written approval of such other party.

Disclosure of reports to the Client's third-party providers is permitted, within the purpose of the Agreement and under similar confidentiality protections. Any publication of research for insight findings need prior written approval by Tsquared, under the conditions that Tsquared will provide at its sole discretion.

Client accepts an Order by ordering, enrolling, using, or making a payment for a Service. Since this Agreement may apply to many future Orders, Tsquared reserves the right to modify it by providing Client at least three months' written notice. Changes will not apply retroactively; they will apply, however, to new Orders and renewals. For Orders with a renewable contract period, Client may request that Tsquared defer the change effective date until the end of the current contract period.

The "Tsquared Policies on Data Protection, dated September 2018" apply as an attachment to this Agreement. Tsquared and its subcontractors may process and store information about the Client and business contact information of Client personnel in connection with the performance of this Agreement, and Client confirms it has obtained the necessary consents. Tsquared may use personnel and resources in other locations and third-party suppliers to support the delivery of Services.

Both parties are independent companies, and each party is responsible for determining the assignment of its own personnel and contractors, and for their direction, control, and compensation.

Client is responsible for its use of Services. Tsquared does not undertake to perform any of Client's regulatory obligations or assume any responsibility for Client's business or operations.

The SaaS Services include a set of security items, and Client shall provide Tsquared notice of any unauthorized third-party access to Tsquared Data of which Client becomes aware. If Client's report content is lost or damaged, Tsquared shall assist Client in restoring it to the SaaS Services from Client's last available backup copy in compatible format.

Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other. Assignment of Tsquared's rights to receive payments is not restricted.

Any notice must be in writing and sent to the address on the Order, unless a party designates in writing a different address. The Agreement supersedes any discussions between the parties. If there is a conflict, an Order prevails over the terms of these general business conditions.

No right or cause of action for any third party is created by this Agreement or any transaction under it. Neither party is responsible for failure to fulfil its non-monetary obligations due to causes beyond its control. Each party shall allow the other reasonable opportunity to comply before it claims the other has not met its obligations. Where approval, acceptance, consent, access, cooperation or similar action by either party is required, such action shall not be unreasonably delayed or withheld.