

# **Terms and Conditions of the “AdEngine” Service**

Smarter Ecommerce GmbH,  
FN 298859z

**Valid from 01.02.2020**

## 1. SCOPE AND CONCLUSION OF CONTRACT

- 1.1 These Terms and Conditions (hereinafter “Terms”) apply to all contracts concluded between Smarter Ecommerce GmbH, FN 298859z (hereinafter “smec”) and its clients (hereinafter “Client”) for the use of the AdEngine software-as-a-service solution (or any part of it).
- 1.2 These Terms supplement the General Terms and Conditions of smec (downloadable via <https://smarter-ecommerce.com/en/gtc>). To the extent that there is any conflict between these Terms and the General Terms and Conditions of smec, these Terms will prevail.
- 1.3 Unless expressly agreed in writing, these Terms apply to the exclusion of any terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

## 2. DEFINED TERMS

In these Terms, any defined terms from the General Terms and Conditions are adopted, and the following definitions apply:

- 2.1 *AdEngine Dashboard*: The AdEngine Dashboard is a user interface within AdEngine that can be accessed online using a modern internet browser, and which contains certain information and gives insight into functions and which may provide the Client with an overview of changes and developments.
- 2.2 *AdEngine*: smec’s proprietary software-as-a-service solution.
- 2.3 *Generation*: the generation by AdEngine of text adverts, keywords and extensions in the Google Ads Account (2.4), to be completed by AdEngine in cycles based on the source provided by the Client and in the agreed structure and set-up format.
- 2.4 *Google Ads Account*: an account which is held directly with Google and which is managed via Google Ads.
- 2.5 *Media Budget*: the Client’s monthly advertising expenditure for third parties such as Google Ads for campaigns that AdEngine manages for the Client (according to the individual performance agreement), regardless of whether there has been any change in the respective campaign in the course of the billing period. For the avoidance of doubt, the media budget is the value in the “costs” column in the Google Ads account (2.4) on the date of calculation.

## 3. OBLIGATIONS OF smec

- 3.1 The object of the contract is the paid provision limited to the duration of the contract of AdEngine for use as a software-as-a-service solution via the Internet. smec grants the Client the paid, non-exclusive, non-transferable, non-sublicensable right to use AdEngine through the use of a web interface for the duration of the contract. Insofar as smec provides new versions, updates or upgrades during the term of the contract, the above usage right will apply to these in the same manner. This usage right includes as well additional payable features. Such features can be booked for an additional fee.
- 3.2 AdEngine comprises the daily update to the campaigns from an existing data source of the Client (over which the Client has full control and responsibility). The Client manages the data source itself and provides AdEngine with access. Campaigns will remain the exclusive property of the Client. In addition, the use of AdEngine may include the provision of the AdEngine Dashboard to provide the Client with an overview of changes and developments.

## 4. OBLIGATIONS OF THE CLIENT

- 4.1 AdEngine is compatible with the current versions of Firefox, Safari and Google Chrome, as well as with newer versions of Internet Explorer. Other browsers will not be supported. smec accepts no liability for adverse effects or damage resulting from the use of an alternative browser. In order to ensure optimum performance and speed of AdEngine, the Client should use the latest version of a compatible browser. smec accepts no liability for any delayed performance or functions that cannot be properly executed due to the use of outdated versions of these browsers.
- 4.2 The Client must, using the Open-Authorization (OAuth2) protocol, authorise AdEngine to access and manage its Google Ads account via the Google Ads API.

- 4.3 The Client is obliged to always provide current and accurate product information in Google Merchant Center and to act without delay in the event of product rejections or product feed rejections on the part of Google. If product rejections remain in the longer term, the performance of shopping-based modules such as Keyword Sourcing may be impaired, which will not constitute a malfunction of AdEngine.
- 4.4 In cases where smec assumes management responsibility for the Client's Google Merchant Center, the Client is obligated to provide an up-to-date data feed, so that smec is able to properly the contractually agreed services. smec bears no liability for adverse consequences of live data feeds not being made available.
- 4.5 The Client must immediately report any malfunctions or defects of AdEngine to the smec support department, including full details of how and under what circumstances the malfunction or defect occurred. The Client must at all times provide all necessary assistance to smec in order to troubleshoot such malfunctions or defects.
- 4.6 Compensation for troubleshooting and rectification costs

If, following smec's reasonable review reveals that there is no malfunction in accordance with the contract, or smec determines that it is not at fault for such malfunction or defect, smec is entitled invoice the Client for (and Client must promptly pay smec) all costs incurred by smec in checking the malfunction and/or defect notification and any troubleshooting effort, such costs to be charged on an hourly basis based on smec's up-to-date price list.

## **5. PRICES AND CONTRACT TERM**

- 5.1 The remuneration for the provision of access to AdEngine consists of a fixed monthly amount ("base fee") and a variable fee, which constitutes a percentage of the media budget used by the Client as part of the created and/or managed campaigns ("usage fee").
- 5.2 If the calculation of the usage fee is not possible on the basis of the data from the previous billing cycle, for example because the Client withdraws smec's access to the Google Ads account, this does not release the Client from his payment obligation. The Client has to pay a fictitious usage fee which can be calculated at the option of of smec in its absolute discretion, on the one hand on the basis of the last 30 days that can be assessed before the inability of calculation or on the other hand the monthly average of the previous 3 months before the inability of calculation.
- 5.3 The fixed compensation ("base fee") is invoiced in advance of the respective billing period. The variable monthly remuneration ("usage fee") is calculated and invoiced at the conclusion of the respective billing period. Payment for services agreed to be provided on a one-off basis or regularly (such as initial adjustments to the software during setup or account management) is payable in advance.
- 5.4 In the event of termination, the data generated by AdEngine will not be deleted from the Google Ads account, but generation will cease on the termination date. If the Google Ads account was created by smec, the Client will no longer have access to this Google Ads account after termination.

## **6. CHANGES OF THE TERMS AND CONDITIONS**

- 6.1 smec may from time to time amend these Terms including, without limitation, to take account of changed legal framework conditions or to include new / changed services.
- 6.2 smec will notify the Client in writing no longer than one month before the proposed date of entry into force of the new terms with reference to the affected changes. The changes shall be deemed approved by the Client unless the Client objects in writing to the changes 7 days prior to the proposed effective date. smec will also inform the Client about this right to objection. The period for objection is only respected, if the objection is received by smec within the deadline.

## **7. FINAL PROVISIONS**

Any translation of these Terms is provided solely for your convenience and is not intended to modify the terms of this agreement. In the event of a conflict between the German version of these Terms and a version in a language other than German, the German version will prevail.