

Terms and Conditions of “smec Shopping” as a Comparison Shopping Service (CSS)

Smarter Ecommerce GmbH,
FN 298859z

Valid from 15.01.2021

1. SCOPE & 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 smec Shopping platform as a Comparison Shopping Service (CSS) (or any part of it).
- 1.2 These Terms supplement the General Terms and Conditions (GTC) 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 in addition the following definitions apply:

- 2.1 *Ad Spend (or Media Budget)*: The monthly advertising expenditures of the Client for Google Ads campaigns connected to the CSS smec Shopping. For the avoidance of doubt, the ad spend is the value in the “costs” column in the Google Ads Account on the date of calculation.
- 2.2 *Comparison Shopping Service (CSS)*: Google uses the collective term “comparison shopping service” (CSS) to refer to price comparison platforms that are part of Google’s CSS partner program and thus eligible to place Shopping ads on behalf of retailers on Google. To ensure that no online shopper is misled, Google requires CSS to publish their Merchants’ product inventory on the respective comparison shopping platform (e.g. smec Shopping).
- 2.3 *CSS Partner Program*: Google’s CSS Partner Program connects Merchants and CSS Partners – like smec. CSS have to undergo in-depth training and fulfill Google’s eligibility criteria. Only CSS above a certain size are entitled to the “Premium Partner”-badge.
- 2.4 *Google Ads Account*: An account which is held directly with Google and which is managed via Google Ads. In order to serve CSS Shopping ads, the Client requires a Google Ads Account that is linked to a CSS-associated Google Merchant Center Account. The Client is free to use either new or existing Google Ads Accounts.
- 2.5 *Google Ads Manager Account (formerly My Client Center)*: Google Ads Manager Accounts (“MCCs”) are a service provided by Google and allow the management of multiple Google Ads Accounts via one dashboard with just one login. smec uses Google Ads Manager Accounts to manage its services and some CSS related Google Ads Accounts. The Client’s contract may explicitly require a link between the Client’s Google Ads Account and smec’s Google Ads Manager Account.
- 2.6 *Google Merchant Center*: A service provided by Google. Using Google’s Merchant Center, product data from an online shop can be uploaded to Google to serve Shopping Ads.
- 2.7 *Google Merchant Center Account*: An account that exists directly with Google and is administered through the product feed (electronic product catalogue).
- 2.8 *Google Multi-Client Account (MCA)*: Also referred to as “Merchant Center Aggregator”. Multi-Client Accounts are a service provided by Google and allow the management of multiple Google Merchant Center and their feeds and domains.
- 2.9 *Merchant*: A “Merchant” is defined by the range of products offered, regardless of the domains used. The product range of a Merchant may only be targeted once per target country. The product range must be the same across all target countries. There may be differences in the product range between the individual domains, as long as these are not significant or necessary to meet the specific regulatory requirements of the target countries. The term “Merchant” thus represents the boundaries for bundling and identifying domains of the Client and offers the Client freedom in the selection of country domains. The definition “Merchant” is directly related to the contractually agreed invoicing scheme.
- 2.10 *Self-Service*: Clients with a self-service contract agree to manage their Google Ads Account(s) and the Google Merchant Center(s) on their own, as well as to take care of the data feed upload if no respective additional services are booked with smec. Should service(s) be required, paid service hours can be booked additionally upon written inquiry.

- 2.11 *Switch*: Refers to the re-association process through which existing Google Merchant Centers of a merchant are “switched”, “reassociated” or “reassigned” to a new CSS. The reassociation or switch process is managed by Google upon request by the CSS and confirmation by the Client. Any switch to a new CSS partner requires the written permission of the existing CSS partner, unless the current CSS partner is Google Shopping. smec follows the corresponding guidelines and recommendations of Google.

3. OBLIGATIONS OF smec

- 3.1 The subject of the contract is the paid provision limited to the duration of the contract of smec Shopping for use as a Comparison Shopping Service / Auction Gateway solution enabling retailers to display CSS Shopping Ads via Google Ads. smec grants the Client the paid, non-exclusive, non-transferable, non-sublicensable right to use smec Shopping as CSS to run CSS Shopping Ads („by smec”) 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.
- 3.2 smec cannot guarantee a certain visual presentation of offers on smec Shopping. This also extends to the URL structure. As the platform is growing and Google’s requirements for CSS Partners may change, smec is entitled to suggest the submission of additional product and store information to improve the quality of the listings. Texts other than that submitted by the Merchant may be subject to A/B tests, translation and updates. smec is entitled to restructuring or highlighting the information submitted by the Client for better user experience. smec also reserves the right to amend, update and change the user interface as long as these changes are within a reasonable scope.
- 3.3 smec does not guarantee that products are matched to a certain product category on smec Shopping.
- 3.4 smec does not sell the products listed on smec Shopping and makes no warranty regarding the accuracy or completeness of product and pricing information displayed. The Client is solely responsible for offers, sales, delivery and/or customer communication. Prices submitted by the Client may be converted for the convenience of users or payment options displayed based on information available on the Client’s website. In the event of discrepancies, the price, offer and shipping information displayed on the Merchant’s website prevail. In no case smec concludes a contractual relationship with the end-customer of a Client.
- 3.5 In case smec receives complaints about a Client regarding the accuracy of listings or order fulfillment, complaints are forwarded to the Client who is obliged to take appropriate measures.

4. OBLIGATIONS OF THE CLIENT

- 4.1 smec Shopping is compatible with current versions of Firefox, Safari and Google Chrome. The Client is aware that outdated versions or other browsers may lead to delays or failures of certain services or functions that cannot be executed correctly. The Client will have no claims due to malfunctions of smec Shopping caused by the use of outdated browsers.
- 4.2 The Client ensures that the submitted product data feed is compliant with Google policies and any other guidelines that have been communicated to the Client. These guidelines may be updated over time. The most recent update prevails.
- 4.3 The Client is explicitly obliged not to infringe any legal, privacy and copyright regulations. Pornographic offers and products that pose a threat and glorify or call for violence, illegal actions or race baiting may not be submitted by the Client. In case of infringement, smec is entitled to immediately suspend the provision of services to the Client. In this case, the Client may not assert any claims against smec.
- 4.4 The Client acknowledges that any infringement of Google policies may lead to the suspension of the Google Merchant Center Account by Google. The Client is not entitled to assert claims against smec for account suspensions that are caused by improper management of the Google Merchant Center by the Client.
- 4.5 The Client is obliged to communicate changes that have an impact on the number of Merchants served through the CSS smec Shopping to their account manager or via email to css@smarter-ecommerce.com before they become effective.
- 4.6 The deletion, disconnection and deactivation of related Google Merchant Center and Google Ads Accounts, or the non-use of the CSS-Services does not lead to an automatic termination or cancellation of the contract.

- 4.7 If the Client reports any malfunctions to the smec support department and 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, smec is entitled to invoice the Client for (and Client must promptly pay smec) all costs incurred by smec in checking the malfunction notification and any troubleshooting effort, such costs are to be charged on an hourly basis based on smec's up-to-date price list.
- 4.8 Unless other services are booked with smec, the Client is responsible for the management of the Google Merchant Center and Google Ads Account. This applies especially to self-service contracts.
- 4.9 The Client is obliged to support smec in fulfilling its contractual obligations. Regarding clause 2.2 (Comparison Shopping Service - CSS), the requirements of smec are considered fulfilled if the Client's Google Merchant Center Account is a sub-account of smec's CSS MCA (as defined in clause 2.8) or if a dedicated user has been added to a re-associated Google Merchant Center Account. The Client has to follow any instructions by their Account Manager that fulfill the purpose of listing the product inventory on smec Shopping.
- 4.10 If the contract between the Client and smec requires the payment of an Usage Fee, the Client is obliged to connect related Google Ads Accounts to a specified smec MCC (as defined in clause 2.5), so smec can access ad spend data and accurately calculate the Usage Fee (see also clause 6.2). The Client is obliged to follow any related instructions by the Account Manager.
- 4.11 If an existing MCA (as defined in clause 2.8) of the Client is re-associated with smec Shopping all sub-accounts of the re-associated MCA account are treated like Google Merchant Center Accounts that have followed a standard switch procedure.

5. OTHER CONTRACTUAL PROVISIONS

- 5.1 The Client grants smec and/or Google the permission to access, index, cache or crawl the landing page URLs of the merchant's website(s) and the content available through these URLs. The Client also allows smec and/or Google to display information related to the submitted product offers. The Client guarantees possession of the necessary rights to grant said permissions. The content may consequently be forwarded to Google and can be published.
- 5.2 The Client ensures that at least 15% of all products in the Merchant Center receive at least one click during each 30-day period. If the Client fails to do so, a warning message requesting changes for compliance (i.e. modification of the data feed) is sent and the Client is asked to remove products from the feed if deemed necessary. If less than 10% of products receive one click or more during the specified period, smec has the right to temporarily suspend the Merchant Center. The payment obligation of the Client remains unaffected. **Currently, this requirement for Merchant Centers using price comparison platforms (CSS) is not enforced by Google (including Google Shopping Europe).** Until Google commences enforcement of said requirement, smec will not require the Client to meet the requirement.
- 5.3 The Client links the Google Ads account through which smec Shopping ads should be served to smec's Google manager account (MCC). This is explicitly required if the parties agree to a usage fee based remuneration.
- 5.4 The Client is not entitled to reimbursement for unclaimed services.

6. PRICES & CONTRACT TERMS

- 6.1 The fee for the provision of smec Shopping may be composed of a fixed monthly amount ("Base Fee") and a variable remuneration that is determined based on the ad spend of campaigns associated with smec Shopping ("Usage Fee") or any other combinations thereof.
- 6.2 If the calculation of the Usage Fee on the basis of the data from the previous billing cycle is not possible, such as because the Client withdraws smec's access to Google Ads or the Google Merchant 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 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.
- 6.3 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.
- 6.4 Invoices will be sent to the Client via the email address provided by the Client.

- 6.5 Upon termination of the contractual relationship, the Client is obliged to follow any instructions by the smec Account Manager. The Client is aware that the termination calls for a “switch back” or switch to a CSS other than smec Shopping. The Client has to grant the written permission to said switch back. Should the Client refuse the switch to another CSS upon cancellation, smec reserves the right to request from Google the closure of the connected Google Merchant Center Account.

7. INVOICING METHOD (“MERCHANTS”)

A “Merchant” is defined by clause 2.9. The exemplary domains listed under below have already been tested on the basis of these criteria. Should further domains be added in the future, smec will check the similarity of their product range during the setup and will inform the Client if the domain will be classified as an additional Merchant.

Example A:

A Client sells consumer electronics. They offer storage media in Germany (DE) only. The Client has the following domains:

- *elektronik-shop.de (used for Germany [DE], storage media in the assortment)*
- *elektronik-shop.at (used for Austria [AT], no storage media in the assortment)*
- *elektroniko.com (used for all countries except DE and AT, no storage media in the assortment)*

As the Client distributes **a similar, only slightly different assortment once per target country**, these domains can be bundled to form **one Merchant**.

Example B:

A Client sells apparel via their shop and manages the following domains:

- *mode-shop.de (used for Germany [DE])*
- *zweiter-mode-shop.com (also used for Germany [DE])*
- *mode-shop.at (used for Austria [AT])*

As **one of the destination countries is used twice, two Merchants** are necessary.

Example C:

A Client sells apparel in Germany (DE) and consumer electronics in Austria (AT). The Client operates the following domains:

- *mode-shop.de (used for Germany [DE])*
- *elektronik-shop.at (used for Austria [AT])*

As the Client distributes **two different product ranges, two Merchants** are necessary.

8. CHANGES OF THE TERMS AND CONDITIONS

- 8.1 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.
- 8.2 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.

9. 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.