

Terms and Conditions of the “Whoop!” 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 Whoop! 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. *Active products*: Products in the Merchant Center are designated as “active products” when they are approved for the placement of Shopping advertisements by Google.
- 2.2. *Bid management*: On a daily basis, Whoop! decides on the amount of bids and any bid modifiers and places these bids or bid modifiers, if a change seems appropriate, on the corresponding product targets or ad groups in the Google Shopping campaign of the Google Ads account. If it is determined that a change is not appropriate, the set bid or set bid modifier remains unchanged.
- 2.3. *Google Ads account*: An account which is held directly with Google and which is managed via Google Ads.
- 2.4. *Google Conversions*: A conversion is a user interaction recorded by the Client through Google Ads conversion tracking that Whoop! should use for optimisation.
- 2.5. *Google Merchant Center account*: An account that exists directly with Google and is administered through the product feed (electronic product catalogue).
- 2.6. *Google Shopping*: a Google service which allows users to search for products on online shopping websites.
- 2.7. *Media budget*: The monthly advertising expenditures of the Client for third parties such as Google Ads for campaigns that Whoop! administers for the Client, regardless of whether a change has occurred in the corresponding campaigns over the course of the previous billing period. For the avoidance of doubt, the media budget is the value in the “costs” column in the Google Ads account (2.3) on the date of calculation.
- 2.8. *Merchant Center*: a service provided by Google. Using Merchant Center, product data from an online shop can be uploaded to Google to serve as the basis for advertising using Google Ads Shopping campaigns.
- 2.9. *Target country*: A target country includes all settings and campaigns of a Client that are used in a distribution country.
- 2.10. *Whoop!*: smec’s proprietary software-as-a-service solution, which enables the placement of the maximum click bid in a Google Shopping campaign on the basis of statistical models, insofar as a change of the bid appears appropriate. In addition, Whoop! includes the provision of a dashboard for the Client for an overview of changes and developments.
- 2.11. *Whoop! account*: an account established with Whoop! directly and which contains the following information: “first and last name”, “company”, “email address” and “password” (hereinafter also referred to as the “Whoop! account”).
- 2.12. *Whoop! Dashboard*: The Whoop! dashboard is a user interface within Whoop! that can be accessed using a modern browser. Via this user interface Google Ads Shopping campaigns are controlled and reports can be viewed.

3. OBLIGATIONS OF smec

- 3.1. The subject of the contract is the paid provision limited to the duration of the contract of Whoop! 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 Whoop! 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 like Query Sculpting. Such features can be booked for an additional fee.

- 3.2. Whoop! comprises the daily update to the campaigns from an existing and active Merchant Center of the Client (over which the Client has full control and responsibility) with current product information approved by Google. The Client administers the Merchant Center itself and grants Whoop! access via an open authentication process (OAuth2). Whoop! enables the placement of the maximum click bid in the Google Shopping campaign on the basis of statistical models, insofar as a change of the bid appears appropriate. In addition, Whoop! includes the provision of a dashboard for the Client for an overview of changes and developments.
- 3.3. Changes to bids by Whoop! are generally calculated and performed on a daily basis in accordance with Item 2.2. Changes to bids are at the exclusive discretion of Whoop!, and non-implementation of changes to bids will not constitute an impairment of the service of Whoop! or its availability.

4. OBLIGATIONS OF THE CLIENT

- 4.1. The Client must have a Google Ads account with activated Google Conversion Tracking with a valid revenue measurement and an active Google Merchant Center account that contains active products to be able to use the full functionality of Whoop! If no measurement of revenue is available, some functions of Whoop! cannot be used without affecting the contractually compliant service performance by Whoop! Whoop! can only provide the contractually agreed service in full after collecting a statistically significant amount of data. If insufficient conversions are measured in a target country with respect to the relevant calculation period, the indicated standard bid will be used for safety until sufficient conversions can be measured.
- 4.2. The Client must, using either the Open-Authorization (OAuth2) protocol or via provision of the 10-digit Google Ads account number, authorize Whoop! to access and manage its Google Ads account via the Google Ads API.
- 4.3. Whoop! is compatible with current versions of Firefox, Safari and Google Chrome, as well as with newer versions of Internet Explorer. Other browsers will not be supported. The Client is aware that it can only achieve optimum performance and higher speeds of Whoop! with the latest version of this browser and that outdated versions could lead to delayed services or functions that cannot be executed correctly. The Client will have no claims due to malfunctions of Whoop! caused by the use of outdated browsers.
- 4.4. The Client is obligated 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 Google Shopping service and consequently also the Whoop! service may be impaired, which will not constitute a malfunction of Whoop!

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 render the contractually agreed services.

- 4.5. The Client must immediately report any malfunctions 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, 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 to be charged on an hourly basis based on smec's up-to-date price list.

5. PRICES AND CONTRACT TERM

- 5.1. The fee for the provision of Whoop! is composed of a fixed monthly amount ("base fee") and a variable remuneration that is determined based on the media budget used by the Client for the campaigns created and/or administered by Whoop! ("usage fee").
- 5.2. 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 one 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.

- 5.4. Invoices will be sent to the Client via the email address provided by the Client.

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.