

# **General Terms and Conditions of Business for Testers of Testbirds GmbH, Radlkoferstraße 2, 81373 Munich, Germany, Date of Issue: 1st January 2012**

## **§ 1 Scope of Application**

1. TESTBIRDS GMBH (hereinafter referred to as "TESTBIRDS") with its registered place of business at Radlkoferstraße 2, 81373 Munich, has a website offering participants to work as a "TESTER". TESTERS operate as independent self-employed or freelance contractors for TESTBIRDS, and are responsible for complying with the respective statutory provisions, in particular with regard to tax law.
2. Specifically, this means that TESTBIRDS offers TESTERS the technical possibility to register as a TESTER on a platform via login ("USER ACCOUNT"), and to independently process "CUSTOMER" orders in the system ("TEST PROJECTS"). Hence, the TESTER is free to decide how many orders he would like to process for TESTBIRDS. The TESTER receives a "CREDIT NOTE" for his activities based on the respective remuneration for the TEST PROJECT.
3. The General Terms and Conditions of Business (hereinafter abbreviated as "GTC") shall apply to all activities performed by the TESTERS for TESTBIRDS. The acceptance of a TEST PROJECT creates a contractual relationship for the test project. By accepting a TEST PROJECT, the TESTER agrees to diligently research and process the accepted TEST PROJECT in accordance with the principles of TESTBIRDS. The General Terms and Conditions shall apply to all contractual relationships between TESTBIRDS and the TESTER.
4. The respective contractual relationship between the TESTER and TESTBIRDS within these General Terms and Conditions is created with the acceptance by the TESTER of an invitation for a TEST PROJECT.
5. TESTBIRDS may modify the General Terms and Conditions at any time. The modified GTC will be announced by e-mail no later than two weeks before the effective date. The modified GTC will be deemed as accepted unless contradicted by e-mail within two weeks of receipt of the e-mail containing the modified GTC. Upon announcement of the modified GTC, TESTERS will be notified of the two-week deadline and of the consequences of a failure to contradict.
6. Oral side-agreements do not exist. Modifications to the GTC must be conducted in writing to be valid.

## **§ 2 Setting up a USER ACCOUNT for TESTERS**

1. The processing of TEST PROJECTS by a TESTER requires a one-time, free-of-charge creation of a USER ACCOUNT and activation by TESTBIRDS. To be able to create a USER ACCOUNT, a TESTER must be at least 18 years old. A legal claim to the activation of the USER ACCOUNT by TESTBIRDS does not exist.
2. The TESTER is obligated to enter the information required for setting up a USER ACCOUNT in an orderly and truthful manner. TESTBIRDS reserves the right to activate a USER

ACCOUNT conditional to the provision of appropriate documentation for individual cases, proving that the entered data is correct. The TESTER is obligated to update the information and to immediately enter necessary adjustments via the user 'data change' function. Should TESTBIRDS be unable to contact the TESTER due to the tester's failure to enter the required changes, TESTBIRDS shall not be responsible.

3. Setting up the USER ACCOUNT requires the entry of a freely chosen user name and a password. The chosen user ID must not violate any rights, in particular third party rights to names or brands and may not violate moral standards. The TESTER shall be responsible for keeping the password secure. The TESTER'S entered place of residence will be considered as his company domicile.
4. Registering a USER ACCOUNT for a third party is generally prohibited. TESTERS are also not permitted to have several USER ACCOUNTS..
5. TESTBIRDS reserves the right to delete the USER ACCOUNT of a TESTER and/or to terminate the contractual relationship with the TESTER in case of a violation of the Terms and Conditions of Business or other obligations in connection with the contractual relationship. In such case, the TESTER will be paid the amounts credited to the USER ACCOUNT by TESTBIRDS for accepted services. A TESTER may delete his/her USER ACCOUNT at any time. Information and data subject to statutory retention periods (e.g. credit notes) will only be deleted after expiry of the applicable statutory retention period. All other data will be deleted upon deletion of the USER ACCOUNT.

### § 3 Handling of a TEST PROJECT

1. After registration as a TESTER and activation of the USER ACCOUNT, the TESTER can view the TEST PROJECTS entered by TESTBIRDS which comply with his/her qualification and the requirements of the CUSTOMER as well as the respective terms. The orders constitute nothing but an "invitation to submit an offer". TESTERS can accept the invitation for a TEST PROJECT and, by accepting, consent to the terms and conditions offered by TESTBIRDS for the TEST PROJECT.
2. If a TESTER accepts a TEST PROJECT, the "DATA" required for processing the TEST PROJECT shall be made available to the TESTER just before the activation of the TEST PROJECT for the term of the TEST PROJECT (e.g. access data, data for ordering goods, and software applications such as apps). The acceptance of a TEST PROJECT by the TESTER does not create a contractual performance entitlement by TESTBIRDS with regard to the TESTER, that the TESTER will process the TEST PROJECT in accordance with the prescribed conditions. TESTBIRDS, on the other hand, shall not be obligated to accept the TESTER'S performance if it does not comply with the requirements and conditions specified in the project description, hence qualifying as improper performance. Performances will, in particular, be rejected if the performance period previously specified by TESTBIRDS is exceeded. If the TESTER delivers the respective performance in due time, the remuneration specified in the project description will be credited under reserve to his/her USER ACCOUNT. This shall not yet constitute acceptance of the performance nor create a remuneration claim. The final approval will be provided by TESTBIRDS. Once approval has been received, the TESTER'S USER ACCOUNT shall be finally credited with the remuneration amount specified in the order description and paid out in accordance with § 5.

3. The tester shall destroy the "DATA" made available after completion of the TEST PROJECT. This shall also apply to applications which were explicitly made available such as Apps.
4. The TESTER shall be responsible for paying taxes on the income generated through TESTBIRDS.

#### § 4 Secrecy/ Rights in the Results of the TESTER

1. The TESTER undertakes to maintain secrecy towards third parties with regard to data and order descriptions transferred in connection with the processing of a TEST PROJECT, and to use this information for his/her performance for TESTBIRDS only. If the TESTER fails to comply with the secrecy obligation, TESTBIRDS reserves the right to claim injunction and damages.
2. Any work results of the TESTER protected under copyright laws shall belong exclusively to TESTBIRDS. The TESTER undertakes to release and make available the work results to TESTBIRDS at any time the TESTER is requested to do so.
3. Upon completion of the tester's activity, the sole right of use shall be transferred to TESTBIRDS. The remuneration paid shall cover any and all potential copyrights.
4. The TESTER warrants, that none of the services rendered for TESTBIRDS include any illegal contents, in particular with regard to third party copyrights, moral rights or other trademark rights, or are in any form relevant under criminal law. The TESTER shall be responsible for reimbursing any costs which might arise for TESTBIRDS as a result of justified third party claims with regard to the contents created by the TESTER. This shall not apply if the TESTER is not responsible for any rights infringed. It is expressly noted that TESTBIRDS reviews the performances provided by the TESTER in the context of quality assurance measures, in particular with regard to the infringement of copyrights.

#### § 5 Remuneration

1. Once an order has been completed by the TESTER, a preliminary credit note is issued in accordance with the terms specified in the order description to the USER ACCOUNT of the TESTER. Upon final approval of the TESTER'S work in connection with the order by TESTBIRDS pursuant to §3 (2), the preliminary credit note is converted into a final credit note on the TESTER'S USER ACCOUNT in accordance with the remuneration terms specified in the order description. No interest shall apply to credit notes.
2. The TESTER can verify the status of credit notes on his/her USER ACCOUNT at any time.
3. The disbursement shall be conditional upon the provision of all legally required billing information by the TESTER. Payment can be made dependent on the condition that proof of registration of a business and/or proof of recognition of the freelance status is provided.

#### § 6 Data Protection

1. TESTBIRDS shall be entitled to collect, process and use the data received from the TESTER as well as the data arising in connection with the order processing for TESTBIRDS in accordance with the statutory provisions and to the extent required for the proper handling of order processing and the execution of the contractual relationship. No data

shall be transferred to third parties by TESTBIRDS without the express consent of the TESTER, unless TESTBIRDS is entitled or obligated to do so by law.

#### § 7 Choice of Law & Jurisdiction

1. The contractual relationship between TESTBIRDS and the TESTER shall be governed by the laws of the Federal Republic of Germany. Exempt from this choice of law, are the mandatory consumer protection regulations of the country in which the Customer has his usual place of residence.
2. The place of jurisdiction for all disputes arising from the contractual relationship between the TESTER and TESTBIRDS shall be the registered place of business of TESTBIRDS.