

# Terms and Conditions

## **Preamble**

Social Media Daily specializes in maintaining the social media pages of businesses and private individuals. The goal is to boost the popularity of these pages, thereby we focus on the most popular social media platforms. There is expressly no affiliation or business relation of any kind to the social networks in use.

As a rule, Social Media Daily acts as an intermediary service provider. This enables Social Media Daily to offer a wide range of services. For example, with the services provided by Social Media Daily, it is possible to reach fast, one-time, as well as continuous, growth of users on social media pages. As Social Media Daily solely provides their services as a reseller and engages third parties for the growth of users, Social Media Daily cannot at any time guarantee the performance of the targeted goal as envisioned in the customer's order. In almost every case, however, the goal will be reached and often exceeded. Should the goal, contrary to expectations, not be reached completely, Social Media Daily will issue a refund (partially, as appropriate).

As regards concept development, design, and content creation, Social Media Daily provides in-house services. Here, Social Media Daily also offers the development of a content draft of businesses' social media activities. Furthermore, Social Media Daily offers to maintain social media presences, which, by means of content, monitoring, and analyses, may lead to increased popularity of social media pages.

## **1. Scope, definitions**

a) Social Media Daily GmbH, Brunnenstrasse 181, 10119 Berlin, Germany (hereinafter "SMD"). The terms and conditions between SMD and the customer are subject to the following terms and conditions in the version valid at the time the service was ordered. Differing conditions of the customer are not recognised unless SMD expressly agrees in writing (or by email).

b) Consumers are individuals within the meaning of § 13 BGB (German Civil Code), i.e., natural persons who conclude the respective legal transaction in primarily neither a commercial nor a freelance capacity. In other cases, the customer is an entrepreneur, according to § 14 BGB. If the customer is a businessperson, a legal entity under public law, or a public trust, the judicial district of Berlin is the place of jurisdiction for all disputes arising from contractual relationships between the customer and SMD.

## **2. Services**

a) Unless otherwise agreed, SMD offers services for the following social media platforms: YouTube, Facebook, Instagram, Google Plus, Twitter, Soundcloud, Spotify, Mixcloud, Vimeo, Vk.com, and Pinterest (hereinafter "platform operators").

b) SMD's primary role is to provide services to increase the user growth of the customers' social media channels. Further, SMD offers conceptual development, design, and creation of social media pages. This can be ordered individually or as a package. SMD offers their services to businesses and private individuals..

c) An important purpose of SMD's work is to increase the number of social media users (hereinafter "fans") of the respective social media presence. The services of SMD can be used either to increase the number of fans quickly, as a one-off, or to increase the number of fans continuously over a longer period of time.

- d) As a rule, proof of delivery can only be determined via the count, which is provided by screen shots. A natural increase in numbers or measures purchased via third parties can explicitly not be taken into account. Similarly, SMD has no influence on comments, reviews, or personal messages that are by-products, not the result of, the service.
- e) During or after processing, there might be a decrease of fans. SMD makes up for the above by delivering an additional 1-30% increase in fans in advance. SMD does so in order to be able to ensure that the customer has at least the number of fans on his social media channel that was ordered in the long term. Should there be a decrease of fans in such a way, that the amount that was ordered is obviously no longer there, SMD will make up for it within the legal time period.
- f) The fans provided – unless otherwise indicated – are from international profiles. This does not represent a cross-section of the world population, but it can, in extreme cases, involve up to 90% from a single country. Inactive users among the profiles provided cannot be ruled out.
- g) If the customer makes content (graphics, text, images, videos, links, etc.) available to SMD for the social media presence, this does not entitle the customer to charge SMD a fee.
- h) SMD is not obligated to hand over editable original data. This is done on customer request and by separate agreement, and it incurs a fee.
- i) Insofar as the customer requests performance specifications as part of the order, SMD will render these within the bounds of possibility. These specifications may refer to the required period of performance or the preferred gender of the procured fans. On SMD's part, a certain deviation from the performance specifications cannot be excluded. In this case, there is no deficiency in performance.
- j) For services including the delivery of comments, following limitation is to be respected: in certain cases where the customer specifies desired comments, it is possible that the specified comments can not or can only partially be provided, because it can not be ruled out that the commenting user disregards the specified comment and uses his own text instead.

### **3. Conditions for the provision of the service**

- a) To assure successful completion of the service, the customer has to send the correct URL and arrange the settings of his or her social media channel in such a way as to allow the unimpeded delivery of users. This includes making contributions, invitations, groups, photos, comments, etc. visible to the public and, if necessary, changing the country and age restrictions categories, etc.
- b) If SMD is provided with a general link or multiple links without further specifications, SMD will distribute the service at its discretion. A daily limit is only offered if this is explicitly mentioned on the respective product page or in the order field. This excludes times of acute delivery problems. The conditions mentioned on the relevant product page apply. Discrepancies can only be taken into account by prior arrangement and, if necessary, prior inspection.
- c) If there is a written agreement prior to the purchase, packages can also be purchased in a different form. If this is required, the agreement has to be referred to during the order process. The check-out process includes a comment field for this purpose. If, during the order process, the special wishes are not entered in the comment field, but are sent in a separate email instead, SMD may not be able to take the special wishes into account.
- d) Especially as regards event services, the customer has to place the order well in advance. SMD cannot guarantee successful completion of last-minute orders and reserves the right to cancel any orders deemed as such.
- e) If a video already contains advertising that has been paid for, SMD recommends its deactivation within the service period. Otherwise, problems may arise with the AdSense account, for which SMD expressly assumes no responsibility.

#### **4. Order process and conclusion**

- a) The presentation of the products in SMD's online shop does not constitute a legally binding offer, rather it is an invitation to submit an order. The offers are subject to the applicable provisions of the product descriptions in the online shop or in the invoice provided by email. The URLs of the products may differ and are not legally binding. Errors remain reserved.
- b) The customer can select services from the range of SMD's offers and collect them in a shopping basket by clicking the "place item into the shopping basket and proceed to the checkout" button. By clicking the "confirm purchase now" button, the customer makes a binding request to purchase the goods in the shopping basket. The customer can change and view the data at any time prior to placing the order.
- c) To correctly execute the order, the customer has to submit his complete data. SMD is legally required to have the customer's address on the invoice. The submitted data are treated in strict confidence.
- d) Once the customer has placed the order, he will receive an automatic confirmation by email, which contains the customer order and which can be printed out by clicking the "print" button (order confirmation). The automatic confirmation merely documents that the customer's order has been received by SMD and does not constitute acceptance of the order. If account details are transmitted by email for the purposes of payment in advance, this also does not constitute an acceptance on the part of SMD. The order of the customer from SMD is entered into with the confirmation of receipt of payment. This confirmation as order acceptance is communicated to the customer by email. The service period specified in the selection box is valid from the start of the service. In almost all cases, the service starts within 24 hours, but in some cases, it may take up to five working days.
- e) The following restrictions apply to purchase on account: Purchase on account is only available to business customers based in Germany. The company has to have a website with a legal notice whose data matches the data stated in the order. In addition, the customer has to enter his VAT ID number in the corresponding field during the order process. In the event of any residual doubt, SMD reserves the right to refuse delivery on account. If the sales value is above €100 (incl. VAT), we initially only provide a partial service; it will be completed once we have received payment. If the conditions are not met, SMD refuses execution until receipt of payment.
- f) SMD replies to order-related customer queries within a maximum of three working days. As a rule, though, these queries will be responded to within one working day. Customers should always specify their order number in order to avoid delays in the processing of the request. SMD reserves the right not to respond to inquiries made on Facebook. As a rule, communication is sent by email, on both the part of SMD and the employees of Call.in, Ullrich Bloss, Kirchplatz 19, 95213 Münchberg. Over-the-phone customer support is available from Monday through Friday between 10 a.m. and 5 p.m. The support provided to the customer must be in proportion to the service rendered and should not exceed the latter.
- g) The customer can upgrade the order during checkout with the option „premium delivery“ for an additional charge. If this option is chosen, the order will be treated with highest priority and processed before orders without the addition „premium delivery“. If the order is placed prior to 8 p.m. CET and is paid directly, processing usually starts within the same day (also on weekends). Increase will therefore begin at the same day, depending on the product. The delivery times mentioned in the product descriptions remain valid. If the order is not paid directly (e.g. via bank transfer), processing will not begin until payment has been received, but will then be processed with highest priority. The customer should also note to forward all the necessary information (especially the link to the social media profile), in order to avoid delay due to otherwise necessary queries.

h) SMD manually checks the content of each order. For orders that meet a number of internal criteria, the order will automatically start. These orders are also checked for their content, but in some cases only after the order started.

## **5. Assurance from SMD with regard to increasing the number of fans**

a) SMD's services, which concern the growth of likes, are an intermediary service and not a sale of likes.

b) SMD is, of course, not able to guarantee specific fan growth figures. SMD will, however, always seek to meet the customer's targets and is prepared to provide a corresponding assurance: Reaching a specific number of fans has been agreed upon in the order. If SMD does not reach this target, the customer receives a discount equal to the percentage of the deviation.

c) A shorter service period or additional deliveries are not a reason for complaint. However, if the service period is exceeded and the agreed on target has not been achieved, the customer is entitled to partial reimbursement.

d) The customer is aware that his wish to stop the service may not be grantable. If 70% or more of the service has already been delivered, it is likely that the remaining percent will be delivered before the service can be stopped.

## **6. Additional services in the case of graphic designs**

a) As a matter of principle, the number of hours specified by SMD in the cost estimate SMD are considered binding when it comes to creating new graphic designs.

b) If the customer is not satisfied with a design, SMD will allocate a maximum of 10% of the number of hours listed in the cost estimate to do further work on the graphic design; this additional service is free of charge.

c) If the free additional service has been provided and the customer is still not satisfied, the customer and SMD have the option of terminating the project at this point. Any contractual penalty agreed upon is not payable in this case. If the project is terminated, SMD voluntarily waves the payment for this specific graphic design. All other services already rendered (such as the conception phase) remain unaffected and have to be paid by the customer in accordance with the contract.

d) The additional services for graphic designs listed in this section of the general terms and conditions are only part of the contract if SMD explicitly lists this in the cost estimate as being part of the services. If no mention is made of these additional services in the cost estimate, then the customer is not entitled to them.

## **7. Term of order, notice of termination**

a) If not expressly stated otherwise, all services at [www.socialmediadaily.com](http://www.socialmediadaily.com) are one-time purchases. No subscription or similar will be bought. As regards concept development (e.g., fanpage management or monitoring), design, and content creation, on-going maintenance of the social media presence by SMD can be agreed upon (continuing obligation).

b) If the agreement between SMD and the customer is a contract without a fixed term, then both parties to the contract have the option of terminating the contractual period with a notice period of 5 days from the end of the month, by email or letter.

## **8. Payment, billing**

- a) The payment and the prices shown include the respective statutory VAT, regardless of whether it is a flat-rate payment or a fee charged by the hour.
- b) In the case of conceptual and design services, payment is due following acceptance and transfer of ownership of the content to the customer and is payable within one week of the invoice date. In the case of more extensive orders, the parties to the contract may agree on a different payment arrangement that includes money upfront.
- c) In the case of ongoing contracts, SMD issues the invoices. Invoices are payable within one week, except the first invoice, which is payable in advance.
- d) SMD reserves the right to request advance payments and/or partial payments once a significant part of the service has been rendered. Advance or partial payments are due for payment within one week.
- e) In the case of credit card payments in particular, SMD reserves the right to obtain confirmation by email or phone before the start of the service period. As a rule, the request is made within 1 to 5 working days. SMD reserves the right to claim a refund per credit card due to suspicion of fraud.

## **9. Acceptance**

- a) The customer is obliged, where relevant, to accept the service rendered if the service complies with the order requirements. The acceptance is to be declared in writing (§ 126b BGB).
- b) During the completion phase, SMD has the right to present individual components of the service (e.g., graphics) to the customer for partial acceptance. The customer is obligated to accept the component of the service provided that it meets the contractual requirements.
- c) The basis for the fulfilment of the campaigns and the relevant proof of service are the documents provided by SMD (such as screen shots of the count created by SMD with regard to the desired service). If the count is not directly visible, the proof is provided through the relevant websites and/or analysis tools. It should be noted that likes, comments, etc. that are added during the service period are not necessarily the result of the service provided. Upon completion of the campaigns, in particular, complaints regarding the service cannot be taken into account if the documents provided by SMD indicate that the service has been provided. If the processing of the service cannot be completed due to higher forces, no reimbursement will be made in so far as processing was started before the delivery problem occurred.
- d) Services that have already been completed cannot be taken back or deleted by SMD.
- e) In the case of infeasible niche services, SMD reserves the right to give a refund or an appropriate partial refund.

## **10. Granting of rights**

- a) As far as the work of SMD enjoys copyright protection, the following regulations apply.
- b) SMD transfers to the customer an exclusive right, with no restrictions regarding space and time within the legal protection period, to the tangible or intangible use of the respective works. The parties assume that the customer intends to make extensive use of the works within the framework of the agreed upon purpose of use.
- c) The customer has the right to transfer rights granted under this contract in full or in part to third parties without requiring the approval of SMD.
- d) The customer is granted the rights of use once the agreed upon remuneration has been paid in full.

## **11. Responsibility for social media presence**

a) SMD assumes no liability for the consequences arising from the legal relationships between the customer and his fans, on the one hand, and the customer and the platform operators, on the other hand. SMD also assumes no liability for any consequences arising from the legal relationship between the platform operators and the customer.

b) The social media presence created by the customer has to be legally permissible; SMD does not perform a legal assessment or assume liability. SMD does, however, reserve the right to reject advertising certain content. This includes the following:

- Political content (e.g. political parties or politicians)
- Illegal, anticonstitutional, violent, repulsive and adult content
- Racism, fascism and speciesism
- Product ratings
- Competitions, votings, contests
- Gambling, betting
- Defamatory acts (e.g. negative comments or „dislikes“)
- Trading/stock exchange, crypto currencies, MLM/ network-marketing and similar
- Pharmaceuticals and armaments
- Upon consultation: religious content

SMD also reserves the right to reject orders with other content.

c) SMD does not assume liability for content (logos, photos, text, videos, links, etc.) supplied by the customer. SMD does not perform a legal assessment. If third parties accuse SMD of possible legal violations resulting from the content of the social media presence, the customer agrees to indemnify SMD of any liability and to reimburse SMD the costs that SMD incurs as a result of a possible legal violation.

## **12. Liability of SMD, guarantee**

a) The following exclusions and limitations apply to the liability of SMD for compensation without prejudice to other statutory entitlement requirements.

b) SMD has unlimited liability if the damage was caused by intent or gross negligence.

c) Furthermore, SMD is liable for the negligent breach of essential obligations in which non-compliance puts the achievement of the purpose of the order at risk, or for the breach of duties in which compliance enables the proper execution of the order in the first place and on which compliance is relied. In this case, SMD is only liable for the foreseeable damage that is typical for the service. SMD is not liable for the negligent breach of duties other than those mentioned in the preceding sentences.

d) The above liability limitations do not apply to injury to life, limb, and health, for a defect after assumption of a guarantee for the quality of the product, or for fraudulently concealed defects. Liability under product liability law remains unaffected.

e) In addition, SMD is not liable for deletions, negative consequences on search engine rankings, or other undesirable side effects of the service. This risk is borne by the customer, which he explicitly accepts with the purchase of the service.

- f) In so far as the liability of SMD is excluded or limited, the same applies to the personal liability of employees, representatives, and agents.
- g) The warranty is based on the statutory provisions.

### **13. Legal responsibility for the services of SMD, exemption**

- a) The customer is solely responsible for using the services of SMD in accordance with all applicable legal regulations. It is the customer's responsibility to check whether and in what way he or she is entitled to use the services of SMD for his or her social media appearance.
- b) The customer is obliged to use the services of SMD only in compliance with the legal requirements.
- c) SMD shall not be liable to the customer for the lawfulness of SMD's services as part of the customer's social media presence. The lawfulness of the concrete use of SMD's services is the sole responsibility of the customer. SMD has no auditing duty in relation to the customer.
- d) The customer exempts SMD from all claims of third parties which may be claimed against SMD in connection with the provision of services by SMD to the customer. This includes the costs of reasonable legal expenses.
- e) Should third parties assert claims against the customer or SMD in connection with the provision of services by SMD, SMD are entitled to discontinue their services for the customer immediately and to terminate the contractual relationship.

### **14. Withdrawal instructions**

#### **14.1 Right of withdrawal**

You have the right to cancel your order within fourteen days and prior to the execution of the order without giving reasons. The fourteen-day withdrawal period begins on the day the order is concluded.

However, since this is an electronic service that starts shortly after ordering and cannot be removed, the following applies: at the end of the ordering process, the customer expressly agrees to the execution of the order before the end of the cancellation period. He takes note that his right to cancel expires with the beginning of the execution of the order.

To make use of our right to cancel, you must send us a clear statement indicating your decision to cancel your order by post or email (Social Media Daily GmbH, Brunnenstr. 181, 10119 Berlin, Germany, [contact@socialmediadaily.com](mailto:contact@socialmediadaily.com)). You may also use the withdrawal form above; however, this is not obligatory.

For the cancellation period to remain valid, it is sufficient to send us the statement before the end of the cancellation period and before the execution of the order.

#### **14.2 The consequences of a withdrawal**

If you withdraw from your order, we will send you a full refund, including delivery costs, no later than fourteen business days after the date of receipt of your cancellation. For this, we will use the same payment method that was used in the original transaction, unless another payment method was explicitly agreed on. Under no circumstances will you be charged for this refund.

If your order was already started as requested during the cancellation period and was partially or completely executed, we will retain an appropriate amount of your payment. This amount is equivalent to the services already delivered up until the date of receipt of your withdrawal

compared to the total volume specified in the order.

### **14.3 Online dispute resolution**

Online dispute resolution website for online shops – Online dispute resolution according to article 14, paragraph 1 ODR-VO: The European Commission provides a platform for the resolution of online disputes (ODR), which can be found under <http://ec.europa.eu/consumers/odr/>.

### **14.4 Money-back guarantee**

Before the start of the service period, the customer can exercise his right of withdrawal. This expires with the start of the service period, which has to be specifically confirmed as part of the order process, or else an order cannot be placed. If there are any delivery problems during the provision of the service, SMD is prepared to grant an appropriate partial refund. In case of dissatisfaction, SMD is always interested in a solution that is satisfactory to all concerned. It should be noted that a cancellation is not possible with every service, especially if the count is displayed with a delay (e.g., in the case of YouTube views).

## **15. Confidentiality, data protection**

### **15.1 Use of data**

- a) All information that SMD is provided with as part of the collaboration with the customer is treated as strictly confidential and only passed on to third parties if this is necessary to fulfil the order and was agreed upon in advance.
- b) The customer agrees, in return, to treat as strictly confidential all information concerning SMD made available to him during the collaboration, insofar as passing on this information to third parties was not agreed upon in advance. This agreement also applies after the end of the cooperation period.
- c) If the customer wishes to delete his customer account with SMD, the customer sends an email to [contact@socialmediadaily.com](mailto:contact@socialmediadaily.com) requesting the deletion of his data. SMD will then immediately initiate the deletion of the customer's data.

### **15.2 Discretion**

SMD will never use the social media presence of existing customers for advertising purposes. The data of the buyers will be passed on to third parties only if this is absolutely necessary for the provision of the service.

## **16. Final provisions, written form, order language**

- a) The law of the Federal Republic of Germany, excluding the UN Sales Convention, applies to the orders entered into between SMD and the customer.
- b) The language of the order is English.
- c) SMD stores the text of the order and emails the general terms and conditions to the customer. The customer can view and download the general terms and conditions here at any time. The previous orders can be viewed in the customer login area if a customer account was set up.