General Terms and Conditions of Nielsen Sports Deutschland GbmbH and Repucom Consulting GmbH | Status as of August 2017

1. Scope of Application

1.1 Any and all deliveries made and services performed by Nielsen Sports Deutschland GbmbH and Repucom Consulting GmbH (hereinafter referred to as “Nielsen Sports”), shall be governed in all respects by the General Terms and Conditions set forth in the following, as well as any individual contractual agreements and shall supersede and prevail over any and all deviating terms and conditions of trade stipulated or referred to by the Client, unless these have been expressly accepted in writing by Nielsen Sports’s authorised representative.

1.2 These General Terms and Conditions shall be binding on this contract and all future business connections between Nielsen Sports and its business partner, no further express inclusion thereof, shall be necessary.

1.3 Nielsen Sports shall, at any time be entitled to modify or amend these General Terms and Conditions giving adequate prior notice. These modifications will be communicated in writing (e.g. email) and are deemed to have been accepted if the Client does not object the validity of these modifications in writing (e.g. email) within four weeks of receiving the notice of amendment. Nielsen Sports will indicate the implications of the Client’s behaviour in this regard, at the beginning of the period. Such modifications shall only be considered accepted by the partner company, if this information has actually been issued.

1.4 If the Client objects to such a modification within the stipulated period, according to section 1.3, Nielsen Sports shall be entitled to cancel the contract on the date the modification becomes valid, however at the earliest 4 weeks after receipt of the objection to the aforementioned modification.

2. Conclusion of Contract

2.1 Unless a separate contractual document has been signed by Nielsen Sports’s authorised officer, contractual obligations in respect of services to be performed by Nielsen Sports shall only become binding upon receipt of order confirmation in writing or electronically (e.g. by email) by Nielsen Sports or, alternatively, once Nielsen Sports performs the services ordered. Both parties shall confirm any verbal agreements immediately in writing.

2.2 Nielsen Sports will be bound to its offers for the duration of 30 days from the date of issuance to the Client.
3. Scope of Service

3.1 The object of service is determined on the basis of the respective performance description, as it was agreed upon when the contract was concluded.

3.2 Nielsen Sports shall be entitled to expand upon the scope of service and make improvements at its own discretion. Nielsen Sports shall further be authorised to modify or redefine services rendered (for example, considering technological progress), unless such alterations would substantially reduce the quality of the service, to the disadvantage of the Client.

4. Delivery Times

4.1 Stated delivery times are generally to be accepted as approximate estimations. In other words, both parties agree that, subject to any other contractually stated agreements, Nielsen Sports is to deliver their services, at the latest, within a 7 calendar day period following the stated delivery date. An example of such an exceptional agreement could be when the continuity of a service provision is bound to delivery on specific deadlines (fixed date transaction).

4.2 Compliance with agreed delivery dates, is also dependent upon a timely delivery of all necessary documents or information by the Client, as well as his active employees for clarification of open questions.

4.3 Nielsen Sports shall not be responsible for delays in order processing and cost increases occurring as a result of incorrect or insufficient data and information or belated modifications and / or documents and informative material furnished that are incorrect, incomplete or belatedly altered and in no such event shall Nielsen Sports be deemed in default on delivery. Any additional costs arising as a consequence of such issues, through the fault of the Client, shall be borne by the Client.

5. Remuneration, Price Variations, Terms of Payment

5.1 All remunerations shall be in Euros, unless otherwise, contractually agreed. Equally, unless otherwise specified, all prices stated are net prices; the Client is liable to additional payment of statutory value added tax.

5.2 In the event that the relevant costs of the ongoing services to be provided, arise in a manner that could not have been predicted at the time of contracting, Nielsen Sports shall be entitled to increase its fee by an appropriate amount according to the increased costs, however no more than 5 % since the last increase and only if 12 months have passed since conclusion of either the contract or the last increase. If requested by the Client, Nielsen Sports will provide proof of the increased costs.
5.3 The remuneration of Nielsen Sports for individual services or deliveries, shall in each case be based on the price quotations as stated at the date of order, unless the compensation was otherwise agreed upon in the contract (particularly, also in accordance with the order confirmation).

5.4 If the order value is EUR 15.000 or more a deposit of 50 % of the entire amount is due upon commissioning, which is to be paid immediately after the invoice is received. The remaining balance is due upon completion of the agreed services by Nielsen Sports and is to be paid immediately and in full after the invoice is received. In the event of delay, Nielsen Sports shall be entitled to demand default interest at the statutory rate according to § 288 Abs. 2 BGB. § 352 HGB remains unaffected.

5.5 Furthermore, Nielsen Sports may raise a handling charge of 10.00 Euros after the second reminder and again for any further payment reminders, the total charge however, not exceeding 20.00 Euros, unless the Client can prove that a lower damage has arisen for Nielsen Sports, due to the delay.

5.6 Unless otherwise agreed any and all payments shall be made using the bank account stated by Nielsen Sports in the contract. Cheques will not be accepted.

5.7 Nielsen Sports may refuse the delivery of contractually agreed services in the event that the Client has not fulfilled all obligations towards Nielsen Sports, arising from this or previous agreements with the Client.

5.8 In the event of services relating to a contract-like agreement, the Client is not entitled to retain payments due to insubstantial defects.

5.9 The Client is not entitled to offset against any claims by Nielsen Sports, unless it concerns mutual and interdependent claims (e.g. claims of reduction for works services) or in the case of uncontested or legally established counterclaims.

5.10 Objections to remunerations requested by Nielsen Sports must be raised immediately on receipt of the invoice.

6. Duration of Contract and Termination

6.1 Unless otherwise agreed, any contracts relating to continuous services to be rendered (continuing obligations) shall be deemed to have been concluded for an indefinite period. They may be terminated by either party at three months’ notice, the notice of termination becoming in each case effective at the end of a calendar quarter. The right to extraordinary termination for grave cause according to § 314 BGB remains unaffected.
6.2 Any notice of termination shall only be legally effective when received in writing.

7. Liability
7.1 Nielsen Sports shall be liable for loss resulting from death, physical injury and damage to health due to an intentional breach of duty on the part of Nielsen Sports. Nielsen Sports is also liable without limitation for other damages, which are based on intentional breach of duty on the part of Nielsen Sports.

7.2 For damages due to gross and simple negligence of these duties, which are fundamental for a reasonable and flawless performance of the agreement and on whose fulfilment the Client therefore relies on, and may rely on (cardinal duty), Nielsen Sports shall only have a limited liability for typical and foreseeable damage or loss.

7.3 The typical and foreseeable damage or loss amounts to a maximum of 100% of the order value.

7.4 Further claims for damages are excluded subject to the provisions in clause 7.6. This limitation of liability shall apply irrespective of the legal ground of the claim asserted, particularly for claims deriving from impermissible acts.

7.5 Insofar as Nielsen Sports’s liability is limited or excluded, this shall also apply to personal liability of the employees, legal representatives and vicarious agents of Nielsen Sports, provided that the Client raises claims directly against any of those.

7.6 Exemptions from liabilities and limitation of liabilities in accordance with clause 7. shall not affect Nielsen Sports’s liability in accordance with the legally compulsory regulations of the product liability law, due to fraudulent concealment of a defect and granting a warranty for the condition of a matter.

8. Claims for Flaws

8.1 The performances rendered by Nielsen Sports are, as a rule, services and not outcome dependent services. In the event that Nielsen Sports does guarantee the achievement of a specified success and therefore renders an outcome dependent service, the following provisions of this clause 8. shall apply. Apart from that claims due to dissatisfaction with the outcome shall be excluded by law.

8.2 The Client is obliged to check for any obvious flaws in the performance of Nielsen Sports for services with an outcome dependent contract within 10 days of receipt. Nielsen Sports must be notified of such issues by the Client within these days. If the Client fails to give timely and reasonable notice of problems, any claims by the Client due to such issues are excluded.

8.3 In the case of warranty, Nielsen Sports shall have the right, at its discretion, to carry out subsequent repair or replacement. Should the correction not prove successful within a reasonable period of time and for the duration of an extended time, which has been set
by the Client, the Client is entitled to the statutory warranty rights in accordance with Nielsen Sports’s General Terms and Conditions.

8.4 Claims by the Client based on flaws shall expire within one year of the start of the statutory limitation period.

9. Copyright and Ancillary Copyright

9.1 The contents and results of any studies, research reports, analyses and other information (hereinafter referred to as “Nielsen Sports –content”) delivered, remain the intellectual property of Nielsen Sports.

9.2 Irrespective of whether Nielsen Sports –content is protected by copyrights or other special protection laws, they may not be reproduced, published, duplicated or otherwise altered in any form by photocopying, microfilming or other processes, without the prior written consent by Nielsen Sports. The Client may only use the Nielsen Sports –content internally and for its own purposes. It is not permitted to pass Nielsen Sports –content on to third parties outside of the company. All rights of communication, e.g. by presentation, remain reserved by Nielsen Sports.

9.3 The Client shall notify Nielsen Sports immediately and without delay of any allegations of third parties that the Client has infringed a copyright, ancillary copyright or other property rights in connection with the services supplied by Nielsen Sports. In any such cases, Nielsen Sports shall be entitled, however not obliged to defend itself against claims arising from any such infringement on its own initiative and at its own expense; it may also reach an agreement by compromise with effects for and against the Client, although a compromise adversely affecting the Client can only be made after the latter’s consent has been obtained.

9.4 If Nielsen Sports initiates legal proceedings or compromise negotiations according to clause 9.3, the Client shall make all endeavours to support Nielsen Sports, keep Nielsen Sports fully informed on all relevant facts and furnish any material required; the Client shall further assign to Nielsen Sports any rights required for the defence against such claim.

10. Confidentiality

Any business or trade secrets, which become known during the contractual relationship, are expressly declared as subject to confidentiality. This confidentiality obligation extends beyond any termination of contract.
11. Other

11.1 Unless expressly agreed otherwise, Nielsen Sports will, for the purpose of communication with the Client (and if necessary or relevant for service provision also with third parties), use electronic means of communication, particularly emails. The Client is aware that the electronic communication traffic is not absolutely secure and that Nielsen Sports cannot prevent that the electronic communication, particularly via email may be read or changed during email transmission by third parties. Nevertheless, the Client agrees to the use of electronic means of communication by Nielsen Sports.

11.2 All contracts concluded between Nielsen Sports and the Client are bound to the law of Federal Republic of Germany, with the exclusion of the UN Convention on Contracts for the International Sale of Goods - (CISG)).

11.3 The sole place of jurisdiction for all disputes between Nielsen Sports and the Client, is Cologne.

11.4 The Client may only assign his rights under a contractual relationship with Nielsen Sports upon Nielsen Sports’s written consent.