



## LMI GmbH Terms and Conditions

### 1. General

These terms and conditions apply to the Products licensed by **LMI GmbH**, a limited liability company established and existing under the laws of Germany, registered at the District Court of Düsseldorf with registration number (HRB) 94257 with headquarters at Hohenzollernallee 43, 40235 Düsseldorf (“LMI GmbH”) to the Customer for the supply of the Products and the use of the data, information and any software or objects protected by copyright included in an/or accessed by means of the Products.

### 2. Definitions

Whenever used in these terms and conditions, the following terms shall have the meaning attributed to them below and include the singular as well as the plural. Other capitalized terms used in these terms and conditions are defined in the context in which they are used and shall have the meanings attributed therein.

“**Affiliate**” means a legal entity which Controls, is Controlled by, or is under common Control of a Party to this Agreement.

“**Agreement**” means these terms and conditions and the applicable Order.

“**Authorised Users**” means the Customer or named employees of the Customer who are authorised to access and use the Products.

“**Control**” means ownership of more than 50% of the equity in a company or control over day-to-day operations through management bodies.

“**Customer**” means the person or entity named as customer on the applicable Order or any separate agreement that may exist between LMI GmbH and such person or entity.

“**Enhanced Functionality**” means a functionality of the Products supplemented by third-party data (or access by the Products to data and/or databases owned by third parties designated by LMI GmbH for a specific Product), such data and/or databases being lawfully used by the Customer on the basis of separate agreements with the respective third parties.

**“Order”** means the document executed by both LMI GmbH and the Customer, listing and describing the Products being licensed, the term of the license, Fees, Expenses, and any special terms or conditions.

**“Organisation”** means all departments within the legal entity of Customer.

**“Party”** means a party to this Agreement.

**“Product Data”** means data included in proprietary databases developed by LMI GmbH and accessible through the Products, and in case of an Enhanced Functionality may also designate third party data or databases used by the Enhanced Functionality, as specified in the product description of each Enhanced Functionality.

**“Products”** means market analysis, benchmarking, tools and information database products and software selected by the Customer and specified in an Order. Products may include any web tools, search engines, data or software provided by LMI GmbH or third parties designated by LMI GmbH that can be used by Customer when accessing Products.

**“Services”** means training, benchmarking, and consulting services provided by LMI GmbH in relation to the use of the Products and the Product Data against payment by the Customer, as contemplated in clause 4 hereof.

**“Term”** means the term of the Agreement as specified in the Order. The Term shall be automatically renewable unless the Agreement is terminated in accordance with the provisions of clause 13 (Termination) herein below.

### **3. License**

LMI GmbH grants to the Customer a non-exclusive, non-transferable licence for the Customer and its Authorised Users to access and use the Products and Product Data for its internal business use only subject to and in accordance with these terms and conditions and the applicable Order, and for this purpose to:

- a. access, search, interrogate, and display the data accessed through the Products on screen;
- b. make a limited number of printouts of items included in the data using the printing commands contained in the Product; and
- c. download and store in machine readable format a single copy of insubstantial portions of the data

The Customer hereby acknowledges and agrees that the copyright, database rights and all other intellectual property rights comprised in or relating to the Products and all compilations thereof and in all documentation supplied by LMI GmbH are and shall remain the sole property of LMI GmbH or, in the case of Enhanced Functionality, property of LMI GmbH and/or third parties designated by LMI GmbH. Save as expressly permitted hereunder, no part of the Products and the related Product Data and documentation may be reproduced in any form or by any means and may not be used to prepare or compile directories, database, mailing lists or other derivative works without the prior express written consent of LMI GmbH. The Customer shall always indicate LMI GmbH (or, in the case of Enhanced Functionality, LMI GmbH and/or third parties designated by

LMI GmbH) as the data source of the Product Data, in any communications by Customer related to and/or pointing/linking to and/or using the Product Data.

Without the prior express written consent of LMI GmbH, the Customer may not:

- a. make multiple printouts or copies of Product Data for distribution to any person other than Authorised Users or within its Organisation; distribution of Product Data to Affiliates shall be allowed only if explicitly agreed in the Order.
- b. re-sell or redistribute the Products or any parts hereof.
- c. make the Product or any parts hereof or any Product Data available to persons other than Authorised Users within its Organisation; making available Product Data to Affiliates shall be allowed only if explicitly agreed in the Order.
- d. abstract, download, store, reproduce, transmit, display, copy or use the Product Data other than as permitted above.
- e. remove any copyright or other proprietary rights notice contained or included in the Products.
- f. use or authorise the use of software incorporated in the Products other than as part of the Products; or
- g. modify, reverse engineer, or decompile the Products, except if permitted by mandatory provisions of the applicable law.

The Customer may not use automated applications, scripts, bots or software to access, search or download Product Data or any of the databases included in or accessed by the Products without the prior express written consent of LMI GmbH.

The Customer shall not use or permit the use of the Products and Product Data otherwise than for the purpose of its normal business activities and shall take all reasonable measures to prevent any person other than its Authorised Users to use or have access to the Products, Product Data or any parts thereof.

#### **4. Benchmarking and consulting services**

In addition to the license to access and use the Products and Product Data, LMI GmbH may provide to the Customer training, benchmarking, and consulting Services in relation to the Products and the Product Data, against payment by the Customer of service and/or subscription fees, if the provision of such Services is agreed in an Order or in a separate statement of work ("SOW").

Any SOW signed by both the Customer and LMI GmbH shall be considered as an inseparable part of this Agreement. The specific terms and conditions for the provision of each Service shall be governed by the SOW, the Order, and this Agreement.

#### **5. Fees and payment terms**

The Customer shall pay to LMI GmbH license and/or subscription and/or service fees within 30 calendar days after the date of issuing of the invoice, or as set out in the Order or otherwise communicated to the Customer by LMI GmbH, together with any applicable value added tax or other sales tax, in the manner and within the payment deadlines provided in the Order. LMI GmbH may assess and collect late payment charges on overdue invoices at the rate of five (5) percentage

points above the European Central Bank "Marginal lending facility" rate for any day of delay, or the highest amount permitted by law, whichever is lower.

## **6. Access to the Products and Product Data**

The Customer will comply with any instructions and requirements relating to the security of the Products and Product Data issued by LMI GmbH. A designated username and password will be allocated by LMI GmbH for the sole use of the Customer or Authorised Users to access the Products. Usernames and passwords are unique to a named individual Authorised User and must not be shared or transferred. LMI GmbH may alter or require from Authorised Users alteration of passwords from time to time in accordance with its standard security procedures and shall inform the Customer accordingly.

The Customer shall promptly notify LMI GmbH if it becomes aware or suspects that any unauthorised person has obtained a password. LMI GmbH will alter the password and inform the Customer accordingly. Where the Customer notifies LMI GmbH by telephone, such notification shall be confirmed in writing by the Customer within 24 (twenty-four) hours.

In the case of Enhanced Functionality, the Customer shall solely be responsible for the access to Customer's or third-party data or databases provided by Customer ("Non-LMI Data"), necessary for the Enhanced Functionality. LMI GmbH shall not have access to any Non-LMI Data, unless exceptionally agreed in writing in a SOW for specific benchmarking and consulting Service(s), and any such access shall always be performed in compliance with the terms and conditions for use of the Non-LMI Data. Customer shall secure for its own account all necessary authorisations for the use, storage, and processing of any Non-LMI Data within an Enhanced Functionality or in combination with the Products and Product Data. LMI GmbH shall not be responsible in any way for the security and the access to any of the Non-LMI Data provided by Customer for use by the Enhanced Functionality.

LMI GmbH may offer to Customer access to third-party tools and software, where applicable, for the use, storage, and processing of Non-LMI Data provided by Customer for use by the Enhanced Functionality. If Customer chooses an option of the Enhanced Functionality including access to third-party tools and software, Customer shall solely be responsible for the compliance with all terms and conditions and terms of use applicable to such third-party tools and software. Customer shall also be solely responsible for the protection of any Non-LMI Data data provided by Customer for use by an Enhanced Functionality with access to third-party tools and software, including, but not limited to, the use of sufficiently strong encryption of the data and the implementation of other available security measures in order to protect and safeguard the data.

## **7. Use of the Products and Product Data**

The Customer shall use the Products and the Product Data in accordance with all laws and regulations applicable to the Customer.

The Customer shall be solely responsible to ensure that its software and hardware systems are compatible with the requirements of the Products and the Customer shall pay all relevant charges associated with such software and hardware.

The Customer shall not use the Products to produce any commercial product or service or for purposes of directly generating revenue from Customer's clients or from the market.

The Customer shall ensure that any copies of the Products or Product Data are securely deleted from its equipment before disposal of the equipment.

Customer shall keep an accurate record of usage of the Product Data. LMI GmbH may, by giving no less than 14 (fourteen) days' notice in writing, require Customer to provide written verification, certified by an officer of Customer, that all Products and Product Data are being used in accordance with these terms and conditions and that all third-party licenses and authorisations related to the use of Enhanced Functionality are valid and in place.

Customer may use the Products to create datasheets, presentations or reports (hereinafter "Works") using information from the Products provided that Works are intended for use in Customer's organisation only and not for sale to Customer's clients or counterparts, and under the condition that the amount of the Product Data used in a Work will be insubstantial and de minimis in nature (<10%) and the Work will not be primarily a copy of the Product or the Product Data or of a substantial part thereof.

In the case of Enhanced Functionality, the Customer shall be solely responsible for obtaining all third-party licenses and authorisations required for the use of the Enhanced Functionality and of Customer's or third-party data processed by the Enhanced Functionality, as instructed by LMI GmbH. The Customer shall pay all relevant charges associated with such third-party licenses and authorisations.

## **8. Changes to the Products, maintenance and interruptions**

LMI GmbH reserves the right to make changes and alterations to the Products or any part or parts thereof from time to time, or to withdraw any part or parts thereof and to make alterations in the times of the availability of the Products and the rules of operation relating thereto, including, but not limited to:

- a. add, amend, delete, or otherwise vary all or any of the Product Data.
- b. withdraw the Products from any particular network through which they are available or to make the Products available through any additional or alternative network.
- c. make changes in the normal service hours and in user identification procedures provided that LMI GmbH shall not make changes in the normal service hours except in the case of emergency without giving at least 14 (fourteen) days' notice to the Customer.

LMI GmbH reserves the right to perform maintenance and/or upgrades of its systems, which may result in interruptions of the access to and/or the use of the Products by the Customer. Such maintenance and/or upgrades shall be scheduled in advance by LMI GmbH ("Scheduled Maintenance") and shall be made, insofar possible, during non-business hours. LMI GmbH shall notify the Customer on any Scheduled Maintenance at least 7 (seven) calendar days in advance, except in cases of emergency, when LMI GmbH shall endeavour to notify the Customer at least 24 (twenty-four) hours before the date and time of the Scheduled Maintenance. The availability of any Product or service hosted on a third-party platform designated by LMI GmbH (e.g. cloud

services providers etc.) shall also be governed by the respective terms and conditions of the designated third-party provider.

If through the fault of LMI GmbH (which shall not include any circumstances beyond LMI GmbH's reasonable control) any Product or Service is suspended or interrupted or is otherwise temporarily unavailable or a fault occurs in a Product which prevents the Customer from effectively being able to gain access to the Products and Product Data during normal service hours, LMI GmbH shall take all necessary steps to rectify the fault as soon as reasonably practicable, but shall not be liable for any loss or damage whatsoever suffered by the Customer as a result of such suspension of interruption.

## **9. No Warranties**

To the extent permitted by applicable law, LMI GmbH makes no express warranty or representation regarding the Products, Services or any Product Data and excludes any implied warranties including but not limited to any implied warranty that the information contained in the Products or Product Data is accurate or up to date or that it is suitable for any particular purpose. All conditions, warranties, or representation express or implied as to the operation or supply of the Product or Service are hereby expressly excluded.

## **10. Limitation of Liability and Indemnification**

None of the Parties shall be held liable for the performance of any of its obligation under this Agreement in case of the occurrence of any act or condition whatsoever beyond the reasonable control of the respective Party, including acts of God, natural disasters, fires, floods, wars, or other catastrophes, acts of government, internet outages, terrorism, labour disturbances, freight or export/import embargos; or delays of a supplier or subcontractor of the Parties due to such causes.

The total aggregate liability of LMI GmbH to the Customer for any direct loss arising out of the use of any Product or service by the Customer or its Authorised Users is limited to an amount equal to the aggregate amount paid by the Customer to LMI GmbH for the use of the Product during the period of 12 (twelve) months prior to the date the loss was incurred.

Except in cases of proven wilful misconduct or gross negligence by LMI GmbH, LMI GmbH shall not be liable to the Customer for any indirect or consequential loss or damage including, without limitation, economic loss arising out of the Customer's use of the Product or Product Data, or otherwise arising out of an Order whether or not the possibility of such loss or damage was notified to LMI GmbH or was within its contemplation. No liability whatsoever is accepted by LMI GmbH for projections or forecasts for future periods made by the Customer based on the Products or the Product Data, or for the incorporation of the Products or the Product Data in Works. LMI GmbH shall have no liability whatsoever for any violation by Customer of this Agreement and/or Customer's failure to use the Products and/or Product Data in accordance to this Agreement. LMI GmbH shall have no liability whatsoever for third party claims resulting from the combination or use of the Products or Product Data in combination with any third-party software, hardware, or information not approved by LMI GmbH or not specified in the Product documentation issued by LMI GmbH.

Nothing in these terms and conditions is intended to limit the liability of any person for death or personal injury caused by the negligence of that person, its employees, or agents or for fraud, except to the extent permitted by applicable law.

The Customer shall indemnify LMI GmbH against any liabilities, loss, damages, costs, or expenses whatsoever caused incurred by LMI GmbH directly or indirectly as a result of any claim or course of action made or instituted against LMI GmbH by any third party arising from the unauthorised use of the Products and/or Product Data by the Customer or its Authorised Users.

LMI GmbH will defend, indemnify and hold Customer harmless, and at LMI GmbH's option, settle any action or proceeding of any kind or description based upon a third party's claim of patent, copyright or trademark infringement asserted against Customer in relation to the Products, provided that: (i) the Products and/or Product Data are used as provided by LMI GmbH; (ii) LMI GmbH is given prompt, written notice of any such claim; (iii) LMI GmbH is given the right to control and direct the investigation, the defence and settlement of each such claim; and (iv) Customer reasonably cooperates with LMI GmbH, at LMI GmbH's expense, in connection with such claims and makes no admission or offer of settlement without the prior written authority of LMI GmbH. This indemnity does not extend to any modifications to the Products by the Customer where; (i) such modification is the cause of the claim; or (ii) the Customer's use of the Products and/or Product Data in combination with any other product or resource not furnished or authorised by LMI GmbH, where such combination is the cause of the claim. Should the Products and/or Product Data, become, or in LMI GmbH's opinion are likely to become, the subject of a claim, Customer shall permit LMI GmbH, at LMI GmbH's option and expense, and as Customer's sole and exclusive remedy, either: (i) to procure for the Customer the right to continue using the Products and/or Product Data; (ii) to replace or modify the same so that they become non-infringing, or terminate the provision of an Enhanced Functionality; or (iii) to grant the Customer a refund of the unused portion of the fees paid by the Customer in relation to the relevant Products and/or Product Data.

The Products may contain links to external sites. LMI GmbH is not responsible for and has no control over the content of such sites and, to the extent permissible by law, disclaims all responsibility and liability in relation to information available on such sites or accessible from the Products via hypertext links.

## **11. Privacy and Data Protection**

Each Party shall comply with all data protection and privacy regulations applicable to it in respect of any personally identifying information relating to any personal contained in the Products. The Customer may make no use of such personal data except as expressly authorised by the Product or by applicable law.

The Customer authorises LMI GmbH to set such cookies (as defined by the applicable European Union legislation) on the computers of Authorised Users in the European Union as are necessary for the purpose of enabling Authorised Users to use and operate the Product. LMI GmbH acknowledges that it is responsible for obtaining any other permission required from Authorised Users under the applicable legislation to set cookies which collect personal data relating to Authorised Users.

## **12. Prevention of corruption and money laundering; Export controls.**

Both the Customer and LMI GmbH shall comply with all applicable laws relating to prevention of corruption, anti-money laundering and export controls. The Customer and LMI GmbH acknowledge that they shall not perform, offer, give, and receive bribes, nor perform any corrupt actions in relation to the procurement or performance of this Agreement, and that they shall comply with all applicable anti-money laundering and export laws and regulations applicable to the Products and their use. Failure to comply with all applicable anti-corruption, anti-money laundering or export laws and regulations shall be deemed a material breach allowing the non-breaching Party to terminate this Agreement with immediate effect.

## **13. Termination**

Without prejudice to any other right or remedy which may be available to it, LMI GmbH may terminate the Agreement or an Order immediately if:

- a. the Customer is in breach of clause 12 above.
- b. the Customer fails to make any payment to LMI GmbH within 30 (thirty) days of the due date.

If a Party does not terminate the Agreement with a written notice to the other Party at least 30 (thirty) days prior to the expiry of the Term of the Agreement specified in the Order as specified herein below, the Term shall be automatically extended for subsequent periods equal to the duration of the initial Term specified in the Order.

Either Party may terminate this Agreement or an Order:

- a. with a written notice to the other Party, sent at least 30 (thirty) days prior to the expiry of the initial Term specified in the Order or any automatic extensions thereof, if the Order does not specify otherwise.
- b. with a written notice to the other Party anytime during a Term, in which case the fees paid by the Customer in advance for a period equal to the current Term shall not be refundable by LMI GmbH to the Customer; in case an Order specifies that the fees due for a Term are not paid by the Customer in advance, the Customer shall remain liable for the payment of any fees due to LMI GmbH for the period until the remainder of the current Term;
- c. in case of a material breach of this Agreement by the other Party, if such breach has not been cured within 14 (fourteen) days of written notice; for the purposes of this clause and in addition to the rules set by the applicable laws and regulations regarding materiality, breaches of clauses 3, 7, 11 and 12 shall be considered as material.
- d. if LMI GmbH no longer has the necessary right from any third party to license or distribute the Product.
- c. if a Party at any time becomes insolvent or bankrupt (or the equivalent in any jurisdiction) or enters into any arrangements with or for the benefit of its creditors or be wound up compulsorily or voluntarily (otherwise than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has a receiver appointed of all or any part of its undertaking or assets ceases or threatens to cease to carry on business.
- e. If there exists another material reason ('wichtiger Grund') with the meaning as given in the German Civil Code ('Bürgerliches Gesetzbuch').



Upon termination for any reason, any licenses and access to the Products granted to the Customer under this Agreement will be terminated, all indebtedness of the Customer to LMI GmbH shall become immediately due and the Customer will forthwith return to LMI GmbH all documentation relating to the Products.

LMI GmbH shall additionally be entitled to suspend any licenses granted to the Customer under this Agreement if it reasonably suspects that the Customer is in breach of this Agreement.

#### **14. Notices**

In order to be valid, any notices under this Agreement must be in writing and delivered to the address of the respective Party shown in the Order (or at such other addresses as the Parties may subsequently designate in writing), by a method allowing to establish receipt by the addressee, such as courier service or registered mail with return receipt, facsimile with written confirmation of delivery, e-mail with written confirmation of delivery.

#### **15. Law and jurisdiction; Limitation period**

This Agreement shall be governed by and construed in accordance with the laws of Germany, without regard to its conflicts of law principles. Each Party hereby submits to the exclusive jurisdiction of the courts of Düsseldorf, Germany. The Parties hereby exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods.

To the extent permitted by mandatory provisions of the applicable law, any cause of action arising under this Agreement must be filed in a court of competent jurisdiction within 2 (two) years of the date such cause of action accrued, or the date the complaining Party should have reasonably discovered the existence of such cause of action, whichever is later.

#### **16. Other provisions**

This Agreement, including any Order and these terms and conditions, shall constitute the entire agreement between the Parties in relation to the subject matter hereof and shall supersede any prior written or oral agreements and/or proposals with respect to the subject matter hereof.

No failure or delay by either Party to exercise any right granted to it by this Agreement shall be considered as a waiver to exercise such rights at any moment in the future.

The Parties are independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture, or employment relationship between them.

The Customer may not assign, transfer, mortgage, charge, or part with any of its rights, duties or obligations under this Agreement to any third party (whether directly or indirectly, by operation of law or otherwise) without the prior written consent of LMI GmbH, such consent not to be unreasonably withheld. Any assignment, charge, or transfer in violation of this provision is void.

If any clause or provision of this Agreement is invalid or declared unenforceable by a competent jurisdiction or authority, the remaining parts of the Agreement shall remain in full force and effect.

LMI GmbH may use Customer's name and logo in compiling a list of LMI GmbH's Customers. Any additional publicity concerning a Party will require the other Party's prior written consent.

No provision of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this Agreement.

The terms and conditions of this Agreement shall survive its expiration or other termination to the fullest extent necessary for their enforcement and for the realization of the benefit by the Party in whose benefit they operate.