

# 3B Private Label Platform Terms of Use

## 1. General Provisions

- 1.1 3B Solution GmbH, having its registered seat in Andernach, registered in the Commercial Register of the Local Court of Amtsgericht Koblenz under HRB26904 with business address in Rennweg 93, 56626 Andernach (“**3BS**”). 3BS establishes and provides a private label portal (“**PLP**”) enabling Customers admitted to 3BS’s PLP (“**Customer**” or “**Customers**”), a professional search for Manufacturers producing according to their demand. For that purpose and subject to the terms herein, 3BS shall grant access to PLP, for Customers in order to access registered, or conveyed Manufacturers on 3BS’s PLP (“**Manufacturer**”) and further 3BS services dedicated to the private label service sector,
- 1.2 These terms of use contain the entirety of the terms applicable between 3BS and the Customer in respect of the services being offered by 3BS. Terms departing from these terms of use are excluded and shall only apply if confirmed in writing. With effect as from the date of the Customer’s admission pursuant to sec. 3 hereof, the Customer is deemed to acknowledge these terms of use as governing.
- 1.3 3BS shall notify the Customer of any changes to the terms of use in writing, by email or via the PLP. Where the Customer does not object to such changes within four weeks from the date of receipt of the first notification, the changes are deemed to have been consented to.

## 2. Services of 3BS

- 2.1 PLP offers the opportunity for Customer and potential Customers to look for and find suitable Manufacturers for products.
- 2.2 3BS’s services with regard to the PLP consist inter alia of:
  - a. Permission to use the PLP following admission of the Customer pursuant to sec. 3;
  - b. Generate discreet Leads; whereby a “**Lead**” is understood as the aggregation of all relevant Product Attributes that describes a Requested Product by a Customer which is allocated to a Product Category of the PLP in order to enable a Manufacturer to make an offer to the Customer;
  - c. Provide and maintain the PLP at 3BS’s expense;
  - d. Develop and market a global network dedicated to private label products;

- e. Transparent measurements to evaluate Manufacturers strengths and capabilities;
- f. Trend evaluation and measurement of global private label trends;
- g. Providing personal services through the commercial agents paid by 3BS;
- h. Professional lead management in order to fasten up the process to satisfy the Customer;
- i. Transparent costing model and no hidden provisions throughout the entire service;
- j. Independent consultancy in order to find the best Manufacturer.

### 3. Admission and Access to the PLP

- 3.1 The prerequisite to the Customer's access and use of PLP is admission of the Customer by 3BS. No party has any claim of right to admission or use of the PLP without being admitted to the PLP by 3BS.
- 3.2 The application for admission is to be made by the Customer via the PLP. In its application for admission, the Customer shall specify its company name, address, legal representative and persons with power of attorney to sign contracts, contact person (including submission of a valid email address), and Value Added Tax Registration Number. The Customer warrants that the details furnished by it to 3BS, in particular in connection with its application for admission are true and complete. The Customer undertakes that it shall notify 3BS promptly of all future changes to the information and details given.
- 3.3 The acceptance of the application for admission is made by 3BS through an e-mail to Customer's contact person confirming admission. By notice of admission, a service agreement under these terms of use is deemed formed between 3BS and the Customer ("**Service Agreement**"), which shall give rise to charges as further described herein.
- 3.4 Via the master login, which will be forwarded to the Customer together with the confirmation of admission, the Customer has the ability to get access to all profiles of Manufacturers presented on the PLP.
- 3.5 3BS is authorized to cancel a Customer's admission or to block its access to the PLP where there are grounds to suspect that the Customer has breached these terms of use. The Customer may avert such measures, if the Customer submits appropriate proof at its own expense and evidence that Customer has not breached or no longer breaches these terms of use.
- 3.6 All logins are individualized and may only be used by the authorized Customer. The Customer must keep its login and password secret and protect them against unauthorized access by third parties. The Customer is also responsible for keeping staff logins confidential and shall instruct its staff accordingly. In the event of any suspicion of misuse by a third party, the Customer shall promptly notify 3BS thereof. As soon as 3BS learns of such

unauthorized use, 3BS shall block access by the unauthorized Customer. 3BS reserves the right to change the login and password of a Customer; in such case, 3BS shall promptly inform the Customer thereof.

- 3.7 3BS has the right to administer and control the PLP and to issue and amend the terms of use, in particular to secure proper and lawful use of the PLP and to carry out necessary amendments within the systems.

#### 4. Conclusion of Contracts with Manufacturer's presented on the PLP

- 4.1 It is intended that the Customer may conclude contracts in particular for private label services directly with Manufacturers. In case the Customer concludes a contract with a Manufacturer a remuneration in the form of a Sales Commission to 3BS is due as described in sec. 5.

- 4.2 For the avoidance of doubt, there is no obligation on the part of the Customer to conclude a contract with a Manufacturer and 3BS is not obliged to enable Customer to enter into a contract with a Manufacturer or a certain number of such contracts.

#### 5. Remuneration

- 5.1 In case the Customer concludes a contract with a Manufacturer, 3BS is entitled to a Sales Commission calculated from the net turnover of each order placed by the Customer to Manufacturer.

- 5.2 The Sales Commission to be paid from the Customer to 3BS pursuant to sec. 5.1 is a percentage on the total annual net turnover of each Customer made with all Manufacturers:

Annual turnover from:	up to an annual turnover of:	Commission in %	Commission in EUR (when reaching the full level / level)
0	100.000€	5,0%	5,000
100.000€	250.000€	4,5%	6,750
250.000€	500.000€	4,0%	10,000
500.000€	1.000.000€	3,5%	17,500
1.000.000€	2.500.000€	3,0%	45,000
2.500.000€	5.000.000€	2,5%	62,500
>5.000.000		2,0%	

- 5.3 The Sales Commission is due for every order (including subsequent or follow-up orders) that was placed by the Customer to a Manufacturer, except for follow-up-orders that are placed on prior to this contract existing order lines.
- 5.3.1 An order line is an individual product, or series, often also described as a stock keeping unit (SKU), as for example “milk chocolate” with specified ingredients, produced according to a specification.
- 5.3.2 An existing order line is an order line that was existent prior to the acceptance of the terms of use by Customer and according to which Customer has placed orders with a Manufacturer prior to Customer’s acceptance of this terms of use.
- 5.3.3 Likewise, where Customer orders from Manufacturer an alteration of an existing order line, this does not trigger a Sales Commission of 3BS.
- 5.4 Customer’s obligation to remunerate 3BS and therefore to pay a Sales Commission is valid for the duration of this Services Agreement concluded between the parties by notice of admission for the PLP and for 3 further years following termination of the Services Agreement.
- 5.5 The Customer will provide on a monthly basis an overview of all orders until the 5<sup>th</sup> of each month to 3BS. The overview shall contain and display all information set out in sec. 6.1 below.
- 5.6 The Sales Commission is due, upon placement of Customer’s order with Manufacturer. The term of payment for the Sales Commission is 15 days upon the invoice date.

## **6. General Obligations of Customer**

- 6.1 Customer is obliged to inform 3BS in writing about every order placed with a Manufacturer and to disclose to 3BS all information that is necessary for 3BS to calculate and assess the commission owed by Customer to 3BS. This information contains in particular:
- 6.1.1 The upload of every contract concluded with a conveyed Manufacturer and/or order that was placed with a conveyed Manufacturer;
- 6.1.2 Products to be produced per SKU by any conveyed Manufacturer for the Customer (also if they are no more listed or registered on the PLP);
- 6.1.3 Name and PLP number of the Manufacturer;
- 6.1.4 Net value of every Customer order placed;
- 6.1.5 Confirmation of (proper) performance of contracts concluded with Manufacturers or short description of deviations;
- 6.1.6 Any payments, or any prepayments made by Customer to Manufacturer, including payment dates.

- 6.2 The obligations described in sec.6.1 survive termination of this Services Agreement for 4 further years.
- 6.3 The Customer has a duty
- 6.3.1 to set up and maintain the necessary data security measures throughout the entire term of the Services Agreement. The foregoing refers primarily to careful and conscientious handling of logins and passwords;
  - 6.3.2 to immediately notify 3BS of any technical changes occurring within its sphere where such changes are apt to adversely impact 3BS
  - 6.3.3 to assist in investigating attacks by third parties on the PLP, to the extent such assistance by the Customer is required;
  - 6.3.4 to use the PLP for no illegal purpose and in conformity with these terms of use only, and further user restrictions that might be issued by 3BS from time to time.
- 6.4 The Customer hereby undertakes that it shall refrain from any acts which would put the functionality of the PLP at risk or disrupt its functionality, and that it shall not access any data it is not authorized to access. In addition, the Customer must ensure that the information it communicates via the PLP and the data it uploads to the PLP (if any) do not contain any viruses, worms or Trojan horses. The Customer hereby undertakes to compensate 3BS for all losses arising out of any non-compliance with these duties, insofar it is responsible for and, in addition, to hold 3BS harmless against all claims of third parties.

## **7. 3BS's right to request information from Customer**

- 7.1 3BS is at any time entitled to request from Customer the information described in sec. 6.1.
- 7.2 Moreover, 3BS is entitled to verify and review the information described in sec. 6.1 by an auditor or tax consultant appointed by 3BS. If a deviation of more than 10 percent of the Sales Commission, to which 3BS is entitled to, becomes apparent, the Customer bears the costs of the audit, in all other cases it shall be borne by 3BS.

## **8. Rights to the Software**

- 8.1 3BS grants to the Customer a worldwide, non-exclusive, non-transferable license for the term of this Service Agreement to use the PLP solely for own purposes, namely by own employees.
- 8.2 The Customer shall not use the PLP for any other purposes than those agreed in this Terms of Use. In particular, the Customer shall not be entitled to (i) distribute, resell the PLP, transfer any rights to it, sublicense it or transfer any other rights to third parties without the written approval of 3BS, (ii) modify the PLP or to develop derivative software products thereof, (iii) make copies of the PLP, (iv) make the PLP publicly or in any other manner

available to third parties, and/or (v) remove, hide or modify indications of 3BS and his copyright as well as signs and trademarks.

## 9. Availability

- 9.1 The Customer is solely responsible for its IT infrastructure and for the connection that he uses to access the PLP.
- 9.2 The PLP shall be available to the Customer at an average rate of 98% per calendar year (“**Availability Time**”). Downtimes shall not be deemed Availability Times if they are caused by:
- 9.2.1 Scheduled maintenance work;
  - 9.2.2 Not foreseeable, urgent maintenance work, e.g. for the elimination of security risks;
  - 9.2.3 Force Majeure or other occurrences beyond the control of 3BS, which were not foreseeable and could not have been avoided by 3BS, in particular strikes, lockouts, exceptional weather conditions, blackouts, traffic disruptions or pandemics.
  - 9.2.4 Third parties that are not subcontractors of 3BS;
  - 9.2.5 The Customer or software or hardware used by the Customer.
- 9.3 The Customer shall without undue delay inform 3BS of any Downtimes that were not caused by scheduled maintenance work

## 10. Liability

- 10.1 The parties shall have no liability for the damages suffered by failure to perform on all or part of their contractual obligations when, and in so far as, such failure is caused by the occurrence of an event of Force Majeure. “**Force Majeure**” means every event unforeseeable and unavoidable, such as in particular climatic event of exceptional magnitude, natural disasters such as earthquakes, landslides, drought, hurricane, and any event caused by abnormal intensity of a nature, deliberate destruction caused by acts of war, riot, insurrection, looting, sabotage, invasion, rebellion or terrorism, pandemics.
- 10.2 3BS shall be liable for damages – irrespective of the legal basis – within the scope of the liability for fault in case of intent and gross negligence. In case of ordinary negligence 3BS shall only be liable – subject to legal limitations of liability (e.g. care in own affairs; minor breach of duty) – for
- 10.2.1 damages resulting from injury to life, body or health,
  - 10.2.2 damages resulting from the breach of an essential contractual obligation (i.e. an obligation the fulfilment of which makes the proper performance of the contract possible in the first place and on the observance of which the contractual partner

regularly relies and may rely); in this case, however, liability is limited to compensation for the foreseeable, typically occurring damage.

- 10.3 The limitations of liability resulting from clause 10.2 shall also apply to breaches of duty by or in favour of persons for whose fault 3BS is responsible under the statutory provisions.
- 10.4 3BS shall use its best effort to maintain the quality of its services and the PLP and for that purpose shall perform on a regular basis remedial-maintenance or enhancement operations on the PLP. During the worktimes on the PLP access or availability of the PLP may be limited or even excluded, without this leading to any liability whatsoever for 3BS.
- 10.5 To the extent that there is any possibility that Customers may be redirected to databases, websites, services etc. of third parties via the PLP, e.g. as a result of the inclusion of links or hyperlinks, 3BS shall not be liable either for the accessibility, existence or security of such databases or services or for the contents thereof. In particular, 3BS shall bear no liability for the legal propriety, substantive correctness, completeness, timeliness, etc. thereof.

## 11. Data Security and Data Protection Notice

The Customer agrees to comply with any applicable data protection regulation especially in respect of any personal data of Manufacturers obtained by Customers via the PLP.

## 12. No circumvention of 3BS

The Customer agrees not to circumvent 3BS in order to “avoid” its payment obligations under the terms of use, i.e. by obtaining products of Manufacturers via third Parties.

## 13. Confidentiality

- 13.1 The parties shall, without limitation in time, keep confidential and shall not disclose the content of this Services Agreement, its conclusion and implementation as well as any Confidential Information obtained from each other, except if and to the extent (i) disclosure is expressly agreed among the parties; (ii) the relevant facts or circumstances are publicly known or become publicly known without any violation of this sec. 13.1; (iii) disclosure is required pursuant to any statute or law, official or judicial orders, or provisions or regulations relating to a stock exchange; (iv) disclosure is made to employees, attorneys, accountants, tax consultants, and other professional advisors of a Party, provided that such employees and advisors are subject to secrecy duty by law or a corresponding confidentiality obligation;
- 13.2 For purposes of this Services Agreement, the term "**Confidential Information**" means and collectively includes in particular:
- 13.2.1 All Know-How, existing IP rights of the parties such as, data, trade secrets, prices, Customer data, Sales strategies;

- 13.2.2 All financial information of the parties, its subsidiaries, their officers, directors and shareholders;
- 13.2.3 All technical information and other proprietary information which has been identified by a Party as confidential and, if disclosed in written form, has been marked as 'confidential';
- 13.2.4 All data stored and gathered during the course of this Services Agreement;
- 13.2.5 All information concerning Manufacturers, their profiles and contact details.
- 13.2.6 In order to ensure the best possible trend evaluation for Customers and Manufacturers, data displayed at the Cockpit of PLP (Market Intel) are expelled from the Confidentiality requirements stipulated in this sec. 13, as long as these data is aggregated in a way which does not allow inferences or identification on the individual Customer or Manufacturer by a third party. Likewise, anonymized data, used in particular for statistical surveys, market research or trend research, are not Confidential Information, as long as such data does not allow inferences or identification on the individual Customer or Manufacturer by a third party.

#### **14. Term and Termination**

- 14.1 The Services Agreement concluded between the parties by these terms of use shall commence when acceptance of the application for admission is made by 3BS through notice of admission (e.g. by email to Customer) pursuant to sec. 3.3. It shall run for an indefinite term.
- 14.2 Either party may terminate the Services Agreement with a notice period of 6 months to the end of a month. Termination is excluded for the first 18 months of the Services Agreement.
- 14.3 Either party may also terminate the Services Agreement without notice period for good cause. Good cause for the terminating party shall in particular exist, if the other party fulfils one or more of the following events:
- A material violation of statutory obligations or of obligations resulting from the terms of use which leads to a loss of the mutual basis of trust;
  - An event of Force Majeure that hinders a party to fulfil its contractual obligations for more than 4 weeks; or
  - A petition under any bankruptcy law is filed by or against a party, or a party executes an assignment for the benefit of creditors, or a receiver is appointed for the assets of a party, or a party becomes illiquid or insolvent or takes advantage of any insolvency or any similar statute.
- 14.4 3BS is entitled to terminate the Services Agreement for cause, in case Customer objects to changes of the terms of use pursuant to sec. 1.3.



14.5 The termination requires written form (letter or e-mail).

## 15. Miscellaneous

15.1 No assignment of the Customer's rights under these terms of use to third parties is permitted, whether in whole or in part, without the prior written consent of 3BS. The Customer shall only be entitled to exercise a right of setoff against 3BS on the basis of counterclaims which are undisputed or have been adjudicated with *res judicata* effect.

15.2 Any terms and conditions of the Customer are excluded, even in case Customer makes express reference to its terms and conditions.

15.3 In the event that one or more provisions of the terms of use is or become partly or entirely invalid or unenforceable, the validity and enforceability of the remaining provisions of the terms of use shall not be affected thereby. In such case, the parties shall be obliged to replace the partly or entirely invalid or unenforceable provision with a valid and enforceable provision, which the parties would have agreed on had they been aware of the invalidity or unenforceability of the respective provision. The same shall apply in the event that the terms of use contains any unintended gaps.

## 16. Governing Law and Jurisdiction

16.1 The terms of use and the Services Agreement constituted by the terms of use shall be governed by and construed exclusively in accordance with the laws of Germany under exclusion of its rules of conflict of laws and the provisions on the Uni-form Law on the International Sale of Goods (*C/ISG*).

16.2 The exclusive place of jurisdiction for all disputes arising between the parties out of or in connection with this Services Agreement and or the terms of use or regarding its validity is the statutory seat of 3BS in 56626 Andernach, Germany.

16.3 In the event that the Customer is located outside the EU or the European Economic Area, the agreement on jurisdiction referred to in sec. 16.2 shall be replaced by the arbitration agreement contained in this clause. Accordingly, all disputes arising out of or in connection with the terms of use and the Services Agreement construed on basis of the terms of use or concerning its validity shall be governed by the Rules of Arbitration of the German Institution of Arbitration e.V. (*DIS*), to the exclusion of the ordinary course of law. The court of arbitration shall consist of one arbitrator. The place of arbitration is Stuttgart. The language of proceedings shall be German.