

# Terms of Service

These Terms of Service together with our Privacy Policy (which may be found at <https://fastuna.com/privacy>) constitute the entire agreement ("Agreement") between **YOU** ("Client") and **Tiburon Research SIA**, a company registered in Latvia under number 40103670887, with principal place of business at 10 Vilandes str., Riga, Latvia, LV-1010 ("Tiburon Research" or "Company") for the use of the [www.fastuna.com](http://www.fastuna.com) website ("Site") including subdomain, services accessible on the Site and other additional services (altogether collectively, "Services"). The Services is provided to Client in accordance with this Agreement and any other applicable rules and policies set forth on the Site.

The Services aim to help businesses to conduct their market research studies and to enhance their business decision making process. By accepting these rules the Client acknowledges its rights to duly represent commercial entity or that Client is registered as individual business activities agent, and its business aims in using the Services, abandons any rights to lodge a complaint as a Consumer, and admits that his/her usage of the Services is firmly and essentially connected to his/her economic or professional activity.

## 1. INTERPRETATION

1.1. Business Day: Monday-Friday (excluding public holidays), 09:00-18:00 Central European Time.

1.2. Client: a duelly registered and approved by the Company (as provided in clauses 2.2 and 2.3) legal entity or a private entrepreneur (i.e., a natural person with business aims, to whom consumer protection legislation in respective jurisdiction does not apply), including their affiliates, subsidiaries, employees, suppliers and any third party directly or indirectly in relations with that legal person or private entrepreneur, using the Services.

1.3. Client's Materials: the advertisements, concepts, sketches, products or packaging images, names, messages, texts, question wordings and any other data, information and materials inputted by or on behalf of the Client in the use of the Services.

1.4. Standard Solutions: ready-to-run research products that are available on the Site to all properly registered and approved Clients.

1.5. Custom Solution: a research product which is modified or customised to meet specific Client's needs and available to such Client only.

1.6. Fees: fees for the Services provided under this Agreement.

1.7. Reports: the reports generated by the Client via the Site containing results of Research Projects.

1.8. Research Projects: the marketing research projects that are initiated by the Client by using the Services.

1.9. Respondent: natural person who participates in Research Projects initiated by the Client using the Services.

1.10. Respondent's Content: content uploaded by the Respondents while participating (e.g. answering survey questions) in Research Projects.

## **2. THE SERVICES**

2.1. The Services allow Clients to conduct the various types of Research Projects using preconfigured Standard or Custom Solutions (collectively "Solutions") available on the Site. Details (such as research methodology, survey flow, report layout, sample source and options, etc.) of each Solution are available on the Site.

### **Registering an Account**

2.2. In order to be able to use the Services Client has to create an account ("Account"). To create an Account the Client has to: 1) fill out the registration form on the Site providing the following information: the Client's company name, VAT number (if applicable), legal address, email and phone number, desired password); 2) read and accept the Agreement by ticking the acceptance of Terms of Service checkbox. Acceptance of the Agreement testifies that Client has read, understood and accepted the Agreement in full.

2.3. Company review all newly created Accounts and activates them on Company's own discretion.

2.4. Client is responsible for the safety of its password, and all the actions on the Site undertaken using the Client's email and password are deemed to be Client's actions.

### **Starting Research Projects**

2.5. Once the Account has been activated by Company the Client may initiate the Research Projects by configuring them via the Site and pressing the "Place my order" button. Once a Research Project has been configured and initiated, Client shall not be able to make any further modification or cancel it.

2.6. Company reviews the Research Projects initiated by the Client within 4 (four) hours during Business Day. Company reserves the right to reject or remove from the Site any Research Project at any time, where it has a reasonable ground to believe that the content of the Research Project fails to comply with the terms of this Agreement or with any applicable legislation or regulation.

2.7. Client is responsible for the quality, legibility and relevance of the Client's Materials. The Client's Materials shall comply with the rules as described in section 'Client's Materials' hereof.

### **Results and Reports**

2.8. The results of Research Projects are accessible to Client as Reports directly on the Site. The Reports are stored on the Site and shall remain accessible to Client for at least 12 months from the Research Project completion date, or until the Account is terminated or suspended for any reason. Upon expiry of the term, the Company has the right to delete Reports and consequently associated Research Project results from the Site without penalties.

2.9. The Research Project results may NOT be used in connection with any dispute resolution, litigation, arbitration or other legal proceeding of any nature ("Litigation Purposes").

2.10. Client acknowledges and agrees that Client, but not Company, is responsible for evaluating the accuracy, reliability, completeness, usefulness of any information obtained through the use of the Site or the Services.

### **General**

2.11. Client shall not assign, transfer, resell, distribute or otherwise use the Services except as agreed herein.

2.12. Company reserves the right to suspend or terminate the Client's account or future use of the Services at any time, where it has a reasonable ground to believe that the use of the Services by Client fails to comply with the terms of this Agreement or with any applicable legislation or regulation, or that your identification data are not true or accurate or are being pirated.

2.13. Company shall, as part of the Services and at no extra cost to the Client, provide the Client with the standard technical support service which includes the provision of bug-fixes and log-in/access problems but does not include training or support with using the Services.

2.14. Company may make changes to the Site and Services at any time. Company may change the terms of the Agreement at any time, requiring Client to check back on this document from time to time. If any modification is unacceptable to the Client, Client shall cease using the Services. Not ceasing using the Site and Services will conclusively mean Client's acceptance of the change.

## **3. PROPRIETARY RIGHTS AND INTELLECTUAL PROPERTY**

### **Services**

3.1. Company retains all ownership rights to all applicable copyrights, trade secrets, trademarks, service marks, trade names, methodologies and other intellectual property rights in the Services. Except as expressly stated herein, the Agreement does not grant the Client any rights to the intellectual property rights or any other rights or licences in respect of the Services or the Reports. Client shall not:

- copy, modify or reproduce the Site, any part of the Services or accompanying documentation in any way;
- reverse engineer, disassemble, or decompile the Site or any part of the Services;
- remove, obscure or alter the Company's proprietary notices or other documentation for the Services;
- without prior written permission incorporate the Services into any other software or hardware product.

3.2. Company grants the Client the right to use the Services to generate Reports and to use, copy and distribute such Reports for the Client's business purposes.

3.3. Company warrants that it shall not infringe any intellectual property rights in the course of providing the Services to Client and shall indemnify the Client against all costs, damages, losses, or claims of any nature resulting from infringement or alleged infringement of intellectual property rights as a result of providing the Services.

3.4. If the intellectual property claim is successful or if it is agreed by the parties that there is an infringement or a serious risk of infringement of the third party's intellectual property rights, Company shall promptly at Company's option and at no cost for Client:

- modify, or procure the modification of the Services so that it will not breach any third party's rights and continue to comply with the Agreement; or
- procure the right to use the Site in accordance with the terms of the Agreement.

### **Client's Materials**

3.5. Client retains all ownership rights on Client's Materials.

3.6. Client hereby grants to Company a non-exclusive, non-transferable right to use the Client's Materials for the purpose of enabling Company to provide the Services to the Client in accordance with the Agreement.

3.7. Client warrants to Company that it has all necessary rights to provide the Client's Materials to Company and that the use by Company of the Client's Materials in accordance with the Agreement will not infringe the intellectual property rights or any other rights of any third party.

### **Branding**

3.7. The Client acknowledges and agrees that Company may include the Client's name or logo in its list of customers on its website or in any other promotional materials; and may refer to the Client, orally or in writing, as a customer of the Services for promotional, marketing and financial reporting purposes.

## **4. FEES AND PAYMENT**

4.1. Company shall be entitled to change the Fees for Services at any time and the Fees payable by the Client will be the Fees stated on the Site the time the Client initiates the Research Project.

4.2. Where Company has agreed Fees with the Client in a Quotation, Company shall be entitled to change such Fees by giving the Client not less than 30 days' notice.

4.3. All Fees are exclusive of value added tax, which shall be added to Company's invoices at the appropriate rate, whereas applicable.

4.4. Fees will be invoiced at end of each calendar month in which the Services are provided.

4.5. All invoices shall be payable within 30 days of the date of invoice.

4.6. If Company has not received payment by the due date, and without prejudice to any other rights and remedies Company may, without liability to the Client, suspend the Client's Account and to terminate access to all or part of the Services. Company shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

## **5. CLIENT'S MATERIALS AND RESPONDENT'S CONTENT**

5.1. Client acknowledge and agree that:

5.1.1. All texts, images, messages, posts, information, data, responses or other materials communicated, submitted or transmitted by you through the Services (collectively, "Client's

Content”), whether publicly posted or privately transmitted, are the sole responsibility of the Client.

5.1.2. Client, and not Company, are responsible for all the content that Client uploads, posts, emails, distributes, communicates, transmits or otherwise make available using the Services.

5.1.3. Company does not control the Content originated by Client when using the Services.

5.1.4. Company may, but is not obligated to, review all Client Content and block, modify, terminate access to, or remove any such Client Content that we, in our sole discretion, consider to be non-compliant with any of the requirements of the Agreement.

5.1.5. By using the Services, Client may be exposed to Respondent’s Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, libellous, vulgar, obscene, offensive, indecent, invasive of another’s privacy, hateful, or racially, ethnically or otherwise objectionable.

5.1.6. Company does not control the Content originated by respondents to Client’s Research Project, and does not guarantee the accuracy, integrity or quality of such Content.

5.2. Client grant to Company an irrevocable, non-exclusive, royalty-free and worldwide license to host the Client Content solely for all reasonable and necessary purposes contemplated by the Agreement.

5.3. Company shall not be liable for any purging, deletion or failure to retain any Client’s Content.

5.4. By using the Services Client is obliged not to request and collect any personal data from Respondents.

## **6. INDEMNITY BY CLIENT**

6.1. Client shall, at its sole expense, indemnify, defend and hold Company, its affiliates and their respective officers, directors, employees and agents harmless from and against any loss, cost, damages, liability or expense arising out of or relating to:

- Client's use of the Services, including its reliance on any information or materials (including the Research Project results) obtained through the use of the Services;
- Any other use of the Services by a third party using Client’s Account (whether or not authorized by Client);
- Client's breach of this Terms of Services;
- Client’s contravention of any law applicable to Client.

## **7. DISCLAIMER OF WARRANTIES**

### **“AS IS” principle**

7.1. The Services are provided to Client "AS-IS" and with all faults and defects without warranty of any kind. Client are using the Services at its own risk. To the maximum extent permitted under applicable law, Company, on its own behalf and on behalf of its affiliates and its and their respective licensors and service providers, expressly disclaims all warranties, whether express, implied, statutory or otherwise, with respect to the Site and the Services, including all implied warranties of merchantability, fitness for a particular purpose,

title and non-infringement, and warranties that may arise out of course of dealing, course of performance, usage or trade practice. Without limitation to the foregoing, Company provides no warranty or undertaking, and makes no representation of any kind that the Site or the Services will meet Client's requirements, achieve any intended results, be compatible or work with any other software, applications, systems or services, operate without interruption, meet any performance or reliability standards or be error free or that any errors or defects can or will be corrected.

7.2. Some jurisdictions do not allow the exclusion of or limitations on implied warranties or the limitations on the applicable statutory rights of a consumer, so some or all of the above exclusions and limitations may not apply to some Clients.

### **Fair Use Policy**

7.3. Company does not place a limit on usage of the Services by Client. In isolated cases where excessive Services usage is having a detrimental effect on other users of the Services, Company may need to take appropriate action to notify Client of such an impact and require the Client to move some of their activity into a less busy period.

## **8. LIMITATION OF LIABILITY**

8.1. Each party shall make no representations or warranties on behalf of the other party.

8.2. The following provisions set out the entire financial liability of Company in respect of the providing license (including any liability for the acts or omissions of its employees, agents and subcontractors) in respect of:

- any breach of this Agreement howsoever arising;
- any use made by the Client and Participants of the Site or any part of them; and
- any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising or in connection with the Agreement.

8.3. All warranties, conditions and other terms which might otherwise be implied into the Agreement whether by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

8.4. For the avoidance of doubt Company shall not be liable for:

- any failure in the provision of Services by the Company due to any failure by the Client to fulfill any of their obligations in particular failure to provide any Client Data necessary in order to carry out the Services;
- any third party content posted on the Service;
- failure of the Client's and/or Client's employees to maintain the security of their login accounts and passwords as well as any other Client data.

8.5. Company shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (innocent or negligent) or otherwise for loss of profits or loss of business or depletion of goodwill or loss or corruption of data or information or any special indirect or consequential or pure economic loss costs damages charges or expenses.

8.6. Company and Client liability of any kind (including Company and Client own negligence) is limited to the Fees paid for the Services provided during the last twelve (12) months of use of the Services.

8.7. In no event (including Company's own negligence) will Company be liable for any:

- economic losses (including, without limit, loss of revenues, profits, contracts, business or anticipated savings);
- loss of goodwill or reputation;
- special, indirect or consequential losses, or
- damage to or loss of data (even if Company have been advised of the possibility of such losses).

8.8. Each party shall be liable for and hold harmless the other party from and against any and all direct damages, liabilities, losses, suits, orders (including attorney fees) as a consequence of its or its affiliates' breach of one or more of its obligations under the Agreement.

8.9. Neither Company nor Client or their affiliates shall be liable for any indirect loss or damage.

8.10. Each party must give a reasonable opportunity to remedy any matter for which another party is liable before incur any costs remedying the matter yourself.

8.11. To the extent allowed by law, both parties exclude all terms, whether imposed by statute or by law or otherwise, that are not expressly stated in the Agreement.

8.12. This article shall survive the termination of the Agreement howsoever arising.

## **9. FORCE MAJEURE**

9.1. Neither party shall be liable in the event that its performance of the Agreement is prevented, or rendered so difficult or expensive as to be commercially impracticable, by reason of an Act of God, labor dispute, unavailability of transportation, goods or services, governmental restrictions or actions, war (declared or undeclared) or other hostilities, or by any other event, condition or cause which is not foreseeable on the Effective Date and is beyond the reasonable control of the party. It is expressly agreed that any failure of the local government to issue any restrictive orders towards any of party. In the event of nonperformance or delay in performance attributable to any such causes, the period allowed for performance of the applicable obligation under the Agreement will be extended for a the period equal to the period of delay. However, the party so delayed shall use its best efforts, without obligation to expend substantial amounts not otherwise required under the Agreement, to remove or overcome the cause of delay. In the event that the performance of a party is delayed for more than 6 months, the other party shall have the right, which shall be exercisable for so long as the cause of such delay shall continue to exist, to terminate the Agreement without liability for such termination.

## **10. DISPUTE RESOLUTION AND GOVERNING LAW**

10.1. In the event of any controversy or claim arising out of or in relation to this Agreement, the parties shall consult and negotiate with each other and attempt to reach a solution satisfactory for both parties. If the parties do not reach a settlement within a period of ninety

(90) days as of the day on which the respective claim arose, any unresolved controversy or claim arising out of or in relation to the Agreement shall be finally settled according to the following clauses of this Article.

10.2. Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the **Arbitration Institute of the Stockholm Chamber of Commerce**, P.O. Box 16050, SE-103 21 Stockholm. Visiting address: Jakobs Torg 3. Website: [www.sccinstitute.com](http://www.sccinstitute.com).

10.3. The Rules for Expedited Arbitrations shall apply where the amount in dispute does not exceed EUR 100,000. Where the amount in dispute exceeds EUR 100,000 the Arbitration Rules shall apply. The Arbitral Tribunal shall be composed of a sole arbitrator where the amount in dispute exceeds EUR 100,000 but not EUR 1,000,000. Where the amount in dispute exceeds EUR 1,000,000, the Arbitral Tribunal shall be composed of three arbitrators. The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration.

10.4. The language to be used in the arbitral proceedings shall be English.

10.5. The seat of arbitration shall be Stockholm, Sweden.

10.6. This contract shall be governed by the substantive laws of Latvian Republic.

10.7. The Arbitral Tribunal shall decide any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof as *ex aequo et bono* or as *amiable compositeur*.

## **11. TERM AND TERMINATION**

11.1. This Agreement shall automatically become effective upon the Client's first use of the Services and shall continue until it is terminated in accordance with this Agreement.

11.2. Client may terminate this Agreement by emailing us at [ask@fastuna.com](mailto:ask@fastuna.com), once the Client has fulfilled its obligations to the fullest extent.

11.3. Client may terminate this Agreement by written notice in the event Company materially breaches any of its obligations hereunder, and said breach is not cured within sixty days of Company's receipt of your notice of such breach.

11.4. Company may terminate this Agreement hereunder immediately by notice to Client in the event that you breach any of Client's representations, warranties, covenants or obligations under this Agreement or contravene any applicable law.

11.5. Upon any termination of the Agreement, Client's rights to use the Services shall cease immediately, Client's account will be deactivated and Company shall have no obligation to retain, forward or make available to you any Research Project results or any other associated content. Upon a termination, all rights and duties of the parties toward each other shall cease except those intended to survive such termination.

## **12. FINAL PROVISIONS**

12.1. The failure by either party to enforce any right or provision of this Agreement shall not constitute a waiver of that provision or of any other provision of this Agreement.

12.2. If any provision of this Agreement shall be determined to be invalid or unenforceable by a court, such provision shall be deemed severable and the remainder of this Agreement shall remain in full force and effect.

12.3. All notices and other communications required or permitted to be given by Company to Client under the Agreement will be deemed to be properly given on the date when: a) posted on the Site, or; b) sent by email to the email address associated with the Client's Account.

12.4. Client may give notices to Company under the Agreement by email to [ask@fastuna.com](mailto:ask@fastuna.com).

12.5. The headings in the Agreement are for convenience only and do not affect the interpretation of the Agreement.

Last modified: 05.12.2017

Tiburon Research SIA

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Contact us: [ask@fastuna.com](mailto:ask@fastuna.com)