

# General Conditions of Contract

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## Preamble

RAL gGmbH has entered into an agreement with Stiftung Warentest according to which RAL gGmbH may licence the word mark and/or figurative mark registered for Stiftung Warentest at the German Patent and Trademark Office to interested licence holders for the purpose of advertising together with its test results. Licensing, which in each case refers to an assessed and appraised product (item or service), is based on the respective publication of the test result in the media (first publication) of Stiftung Warentest. The licence holder intends to use the appraisal undertaken by Stiftung Warentest for advertising purposes.

In this way the licence holder is given the opportunity to use the registered word marks and/or figurative marks that have been summarised in § 1 in accordance with the granted right of use in § 2 of these General Conditions of Contract for advertising purposes for a limited amount of time.

## § 1 Scope of use

After the licence holder has submitted an application and RAL gGmbH has accepted the licence application (hereinafter: licence contract), the right of use is granted for one or more of the following marks depicted, namely

- (1) Word mark / figurative mark 302012028491



- (2) Word mark / figurative mark 302012028493



- (3) Word mark / figurative mark 302012028490



- (4) Word mark / figurative mark 302012028492



- (5) Word mark / figurative mark 302012028495



- (6) Word mark / figurative mark 302012028494



## § 2 Granted right of use

- (1) In accordance with the licence contract concluded between the licence holder and RAL gGmbH and the price defined in the licence contract, the licence holder receives from RAL gGmbH the non-exclusive right, limited by location and time, to use one or more of the marks depicted above in § 1 for the purpose of advertising the product assessed and appraised by Stiftung Warentest within the Federal Republic of Germany and/or for advertising targeted at the German market and, under consideration of the conditions stipulated in § 4 regarding advertising with assessment results, to insert a text into the intended field of the mark(s) at his own responsibility. Further details can be found in § 3 section 3, in combination with Annex 1 to these General Conditions of Contract.
- (2) In the case of identical products, the licence holder assures RAL gGmbH that the product for which he applies for a licence is indeed identical to the product assessed and appraised by Stiftung Warentest. RAL gGmbH does not undertake an own assessment to ascertain whether the product is indeed identical.
- (3) The licence is allocated a licence number by RAL gGmbH. This is to be attached by the licence holder for mark(s) in landscape format on the outside, next to the right margin at the bottom, vertical to the field that is to be completed, and for word marks and/or figurative marks in portrait format on the outside, below the field that is to be completed. It must be sufficiently legible in each case (see examples in **Annex 1**).

- (4) The licence holder is solely responsible for the integrity of his advertising. RAL gGmbH provides neither assessments with regard to competition laws, nor to wording or logo design. The licence holder releases RAL gGmbH from all claims by third parties resulting from this.
- (5) On the basis of the granted right of use, the licence holder is entitled in particular to:
  - a) apply the marks to the product or to its presentation or packaging or at the point of sale,
  - b) offer the product or bring it into circulation or own it for the purposes mentioned under the mark,
  - c) offer or provide the service under the mark(s),
  - d) use the mark(s) in advertising.
- (6) RAL gGmbH makes the mark(s) available to the licence holder in electronic format as an EPS file (printable vector file).
- (7) If the silver model has been agreed in the licence contract, the licence holder is entitled to use the mark(s) in accordance with the licence contract and these General Conditions of Contract for the purpose of advertising with the mark(s) on the products and/or in all media excluding TV and cinema advertising. The gold model additionally includes TV and cinema advertising. Further details on the "silver model" and the "gold model" can be found in § 8.

### **§ 3 Limits of the use of the mark**

- (1) The licence holder is not entitled to use the mark(s) in a way that deviates from the registered form provided as reproduced above, in particular making graphical changes, except for the right to insert the promotional text in accordance with § 1 and/or § 2 section 1 into the mark(s). In particular, the licence holder is not entitled to:
  - a) change the proportions of the individual components of the mark to each other,
  - b) change the colour composition of the marks; where in individual cases a multi-coloured depiction is not possible for technical reasons or as a result of the medium used, the licence holder is obligated to depict the mark in black/white,
  - c) depict the text to be inserted into the marks in a font other than Linotype Univers Basic Regular or Linotype Univers Basic Bold or alternatively in the fonts Arial or Arial Bold and in a colour other than "black" and to fail to reproduce a quality verdict in capital letters,
  - d) translate the marks and the included texts into a different language.
- (2) If the use of the mark(s) of Stiftung Warentest by the licence holder deviates in any way from the registered form reproduced above, the selected form of use is still not a permitted type of use in the sense of these General Conditions of Contract even if the deviations do not alter the characteristic features of the mark(s).
- (3) The permitted uses of the marks of Stiftung Warentest for advertising with test results have been attached as **Annex 1** with examples of test results.

### **§ 4 Other conditions for advertising with test results and marks of Stiftung Warentest**

- (1) The test results must not be used in advertising in such a way that suggests to the consumers that individual products are superior when this is not justified by the published test results. The licence holder thus undertakes to RAL gGmbH not to give rise to incorrect assumptions by the consumer or to mislead the consumer on the test of the products conducted when using the test results of Stiftung Warentest and the mark(s) of Stiftung

Warentest in advertising. In particular, the licence holder undertakes:

- a) that the advertising statements referring to test results of Stiftung Warentest are clearly spatially separate from other statements made by the licence holder in the advert,
  - b) that the statements of Stiftung Warentest are not reworded by the licence holder in his own words,
  - c) that the terminology of the test scale is not also used for those advertising statements that do not refer to the test results of Stiftung Warentest,
  - d) that favourable individual statements or comments are not included in isolation if other statements or comments are less favourable,
  - e) that a published quality verdict summary must in any case be communicated,
  - f) that the advert, in cases where no quality verdict was awarded, contains all group verdicts or, where applicable, the summarising semantic assessment of Stiftung Warentest (e.g. "above average", see **Annex 1**, which contains examples nos. 3, 7, 8c), 8d),
  - g) that the advert is sufficiently legible,
  - h) that advertisements in audiovisual media (TV, cinema or online advertising) are perceptible for a sufficiently long period of time, although at least for 3 seconds.
  - i) that the licence number named in § 2 section 3 is provided sufficiently legibly and in immediate connection with the field of the mark(s) that is intended for the text.
- (2) The advert with the test results may in light of the test not be associated with products to which it does not apply. In particular, the licence holder undertakes only to advertise using the licensed marks:
- a) if the product's features that were the subject of the test have not changed since publication of the test,
  - b) if, where a food was tested, results referring to a particular batch specified in the publication (e.g. specification of the expiry date, see **Annex 1**, example no. 2), are used for advertising only if the number of the tested batch is included,
  - c) if in an advert for products that are identical but were not included in the test, the actual tested product is also named (see **Annex 1**, example no. 4),
  - d) if an advert for the test results of the corporate social and environmental responsibility (CSR Test) also always includes the test results of the product test carried out in parallel. The licence holder is obligated here to reproduce the CSR test result in its own word mark / figurative mark in the advert and in accordance with § 2 section 3, § 4 section 1 h) to add the same licence number that was allocated for advertising with the product or service test to this mark.
- (3) The information on the test results of Stiftung Warentest is to be reproduced and designed in a manner that can be verified simply and clearly. This includes declaring the medium and point in time of the initial publication in the advert.
- (4) If Stiftung Warentest is re-assessing a product that has already been tested and for which a licence has been purchased before the licence period has expired, the licence holder remains entitled to use the licence until the end of the agreed period of validity for the licence. If the appraisal of the product is changed in the re-assessment, the product is from then on to be advertised with the new test result. Products that bear the old test result may be sold off in accordance with § 6 section 9. Once the period of validity for the licence has expired, a new licence can be purchased for the new test result. Here the limitation of the period of validity in accordance with § 6 section 4 b) is to be considered.

## § 5 Special regulations for online publication and quick tests

- (1) When advertising with test results from the product finders on [www.test.de](http://www.test.de), RAL gGmbH permits the use of the test.de mark(s) (see **Annex 1**, examples 8a) - 8d). The licence holder undertakes to always specify the online publication portal. If the results are also published in the magazines "test" or "Finanztest", the licence holder can decide which mark(s) he would like to licence.
- (2) Advertising with test results of quick tests and/or "under the magnifying glass" is granted on the condition that the overall statement is not falsified. The licence holder thus undertakes to reproduce the entire test / Finanztest / test.de comment and/or the summary in the area with the grey background of the test / Finanztest / test.de mark(s) (example **Annex 1**, no. 9)

## § 6 Length of use – end of the contract

- (1) RAL gGmbH grants interested licence holders the right of use for individual or multiple marks stated in § 1 of these General Conditions of Contract as follows:

In general,

- a) for a period of two years, starting on the date that the licence contract is concluded (regular period of use); independently of this, the granted right of use ends at the latest 2 ½ years after the first publication of the test result;

Alternatively,

- b) for a period of (initially only) one year, starting on the date that the licence contract is concluded (short period of use); this short period of use may be extended by a further year on application of the licence holder during or after the expiry of the period of validity of the contract; in this case, the granted right of use ends at the latest 2 ½ years after the first publication of the test result; or;

- c) for a period of at most one year, starting on the date that the licence contract is concluded (exclusively short period of use), if the subject of the tests includes, in particular, the following product groups:

aa) Software products and smartphone applications;

bb) Construction financing/real estate loans.

Interested licence holders can find information about other affected product groups as part of the electronic application process on the relevantly valid version of the website <https://www.ral-logolizenz-warentest.de>.

The granted right of use for the product groups named in C) ends at the latest 1 ½ years after the first publication of the test result.

- (2) Alternatively to section 1 a) and b), licence holders may generally make an application to extend the period of use by a further year for products, except for the product groups named in section (3). There is no right to an exception (see here the subsections 3 and 4). This applies to both an extension to the regular period of use in accordance with section 1 a) (extended period of use) and also after a non-extended short period of use in accordance with section 1 b) (reactivated period of use). The term of the extended period of use follows on directly from the regular period of use. The term of the reactivated period of use starts on the date that the licence contract is concluded with RAL gGmbH.

In both cases, the right of use ends at the latest 3 ½ years after the first publication of the test result. This presumes that the licence holder has or had a valid licence agreement for the product and at least 1 ½ years have expired since the first publication of the test result.

The licence extension is only valid upon special application and after prior individual evaluation by Stiftung Warentest. Acceptance of the application is excluded if the test for the product/product group is currently being carried out under amended conditions and/or significant changes to the evaluation criteria were necessary or the test for the product/product group was already carried out under amended conditions or it was based on significantly changed evaluation criteria.

The application is to be sent by e-mail to RAL gGmbH. Before making a decision on the extension of the period of use, RAL gGmbH will forward the application to Stiftung Warentest for individual evaluation. The first decision on the extension of the period of use then refers to all products covered by a test published at a certain point in time or in a defined time period.

- (3) In the case of the product groups named below, any application for an extended period of use or reactivated period of use and a licence extension according to section 2 is excluded:
- a) Foodstuffs and animal feed;
  - b) Services directly provided by natural persons in those areas relevant to the test (e.g. consulting services or further education provision);
  - c) Internet based services and products, whose firmware is regularly changed via the Internet;
  - d) Products for which a follow-up test with amended test criteria and/or evaluations has already been published.
- (4) The licence contract concluded between RAL gGmbH and the licence holder ends:
- a) on expiry of the agreed period of use, without requiring a termination,
  - b) in accordance with § 6 section 1 a) and b) on expiry of the period of 2 ½ years after the first publication;  
in accordance with § 6 section 1 c) on expiry of the period of 1 ½ years after the first publication;  
in accordance with § 6 section 2) on expiry of the period of 3 ½ years after the first publication
  - c) if the features of the product or the service that were the subject of the test are changed in accordance with § 4 section 2 a),
  - d) through extraordinary termination in accordance with § 6 section 5,
  - e) through extraordinary termination in accordance with § 6 section 6,
  - f) through extraordinary termination in accordance with § 6 section 7,
- (5) The licence contract can be terminated for extraordinary reasons by RAL gGmbH if, due to unforeseeable events, RAL gGmbH subsequently becomes aware of facts that make continued advertising for the product or the service appear irresponsible due to consumer protection issues.
- (6) The licence contract can be terminated in an orderly fashion by either contractual party if the other party violates one of its obligations included in this contract. Extraordinary termination is only permitted if the contractual party has previously unsuccessfully requested that the other party remedy the violation of the contract within a period of one week.
- (7) Further, the contractual parties are entitled to the right to extraordinary termination of the contract for an important reason through appropriate application of § 626 BGB (German Civil Code).
- (8) Any termination requires the text form in accordance with § 126 b BGB.
- (9) At the end of the licence contract, for any reason, the right of the licence holder to use the mark(s) of Stiftung Warentest ends. The selling off of products (goods) that were labelled or whose packaging was labelled with the mark(s) of Stiftung Warentest in accordance with the licence contract remains permitted beyond the end of

the licence contract as an exception, provided that these products were produced during the period of validity of the licence contract. All other active advertising with the mark(s) included in the licence must cease in all media after the end of the licence contract. In case of doubt, the licence holder undertakes to submit corresponding proof to RAL gGmbH (e.g. batch numbers and product codes). This exception does not apply to services offered.

## **§ 7 Sublicensing**

If desired, the licence holder is also entitled to grant the right of use arising from the licence contract for the product to third parties as part of a sublicensing agreement. This does not affect the period of use defined in § 6.

## **§ 8 Licence fee**

- (1) The licence holder pays a licence fee for the use of the mark(s) of Stiftung Warentest for the period of use agreed in the licence contract, as well as for the reactivated period of use according to § 6 section 2, in accordance with the valid price list that is enclosed as **Annex 2** to these General Conditions of Contract. The licence fee plus the relevant statutory level of VAT is immediately due for payment to RAL gGmbH upon receipt of the invoice.
- (2) The licence holder is entitled at all times to switch from the “silver model” to the “gold model” in future by submitting a written declaration. The licence fee increases accordingly and is calculated on a daily basis.
- (3) A refund of the licence fee paid in the case of the contract ending early due to a change to the product or the service in accordance with § 6 section 4 c) or due to extraordinary termination by RAL gGmbH in accordance with § 6 section 4 e) in connection with section 6 and section 4 f) and in connection with section 7 or due to expiry of the period of 1 ½, 2 ½ and 3 ½ years after first publication in accordance with § 6 section 4 b) remains excluded. If the licence fee has not yet been paid at the time of the early termination of the contract, a pro rata settlement for the period of use that has become invalid is also excluded. In case of an early termination of the contract due to extraordinary termination by RAL gGmbH in accordance with § 6 section 4 d) in connection with section 5), the licence fee paid by the licence holder is refunded pro rata for each full quarter of the period of use that has become invalid or settled on a pro rata basis.

## **§ 9 Liability - indemnity**

- (1) RAL gGmbH does not assume any liability for the fact that compliance with the obligations included in this contract by the licence holder does not exclude the possibility that the licence holder may violate statutory or contractual obligations of the licence holder towards third parties or that the licence holder may be pursued by a third party as a result of such violations
- (2) RAL gGmbH does not advise the licence holder on issues concerning admissibility of the advertising.
- (3) The licence holder undertakes to release RAL gGmbH and Stiftung Warentest in their internal relationship from any claims made by third parties – regardless of their legal reason – as a result of use of the mark(s) and/or advertising with test results, or to compensate them for such claims. The rights of the licence holder to provide proof that RAL gGmbH and/or Stiftung Warentest did not incur any damages remains unaffected.

## **§ 10 Legal successor – connected companies**

This contract can be transferred to any legal successors of the licence holder and to companies connected to the licence holder. In this case, the licence holder undertakes to impose the obligations arising from this contract on any legal successors or connected companies, including a corresponding obligation for further transfer.

## **§ 11 Data protection**

RAL gGmbH points out that any personal data of the licence holder or of any natural persons acting on his/her behalf may only be collected, stored, processed, communicated and used for the purpose of execution of the contract. All data of the licence holder or natural persons acting for him/her is treated confidentially. Passing on this data to third parties for commercial purposes is excluded. RAL reserves the right to involve third parties for the execution of the contract.

## **§ 12 Applicable law – place of fulfilment – place of jurisdiction**

- (1) This contract is subject to the laws of the Federal Republic of Germany to the exclusion of the German international private law.
- (2) The place of fulfilment for the obligations arising from this contract is Bonn.
- (3) The place of jurisdiction for any disputes arising from this contract is agreed to be Bonn.

## **§ 13 Final Clauses**

Changes to this contract by individual agreement are effective informally. Further, changes or additions to this contract and any side agreements require the written form to be legally effective. No oral side agreements have been made.

**Annex 1: Permitted use of the word marks and figurative marks of Stiftung Warentest in advertising**

**Annex 2: Price list for the use of the word marks and figurative marks of Stiftung Warentest in advertising**