

Terms & Services for Testseek Services [rev 2.2]

This agreement is formed between FMP Publishing AB (Testseek) with offices at Landalagången 11, 411 30 Goteborg, Sweden and “Company” which are using Testseek’s B2B services. This Terms & Services agreement is made as of the date when Company has signed the order form.

Whereas, Testseek makes available to Company certain content, hereinafter referred to as the “Content”, as specified in the order form and/or SLA. Testseek offers different types of the Content, each for which special conditions may apply as specified in this document. The offered types of Content are:

- Aggregated Expert Reviews (hereinafter referred to as “AER Content”), including but not limited to texts, review meta data, awards, ratings coming from 3rd party online publications.
- Aggregated User Reviews (hereinafter referred to as “AUR Content”), including but not limited to texts, review meta data, ratings coming from 3rd party retailers or shopping portals.
- Aggregated Videos (hereinafter referred to as “AV Content”), including but not limited to videos coming from 3rd party websites such as Youtube.

Whereas, Testseek makes available to Company the Content via various data delivery methods, jointly referred to as the “Services”:

- “Hosted Services”. This includes the “Testseek Live API” or any data delivery method in which the Content remain hosted by servers controlled by Testseek.
- “Data Feed Services”. This includes any of Testseek’s XML Export APIs or any data delivery method in which the Company hosts the Content on any server other than Testseek’s own servers.

Whereas, Company maintains one or more web sites on which the Company wish to publish the Content.

Whereas, Testseek wishes to grant certain rights and licenses to Company with respect to access to the Services as set forth in this Agreement.

Definitions:

“Company” means the legal entity which is using the Services and thereby has agreed to follow the rules and regulations as specified in this document.

“Company Web Sites” means, collectively, all Web Sites controlled and maintained by or on behalf of the Company.

“Order Form”. A separate document containing the actual order with signature and specifics, including (not limited to); effective date, Services fee, Services ordered etc.

“SLA”. An SLA document (Services Level Agreement) may (or may not) be a part of the complete agreement between Testseek and the Company. In such case, any agreements in the SLA shall overrule any agreements made in any other document (including this document).

1. Rights Granted

1.1 Testseek Grant. Subject to the terms and conditions of this Agreement, Testseek hereby grants on a non-exclusive, non-transferable basis to Company the right use the Services, for making available the Content on the Company Websites as specified in the Order Form and/or the SLA. Company and its Affiliates shall have no right to reproduce or sub-license, re-sell or otherwise distribute all or any of the Content or Services to any third party.

1.2 Trademark License. Company shall have the right to use the Testseek name, trademarks, service marks and logo in order to promote any of the Company's products or the Services to its business partners.

1.3 Exclusivity. The agreement is "non-exclusive".

2. Certain Obligations of the Parties

2.1 Testseek Obligations. Testseek will provide the Services as described in the partner's B2B section at the Testseek.com website, or otherwise as agreed with Company in the Order Form, the SLA or in this document.

Testseek shall provide Company with the possibility to report any errors in the Services or Content and Testseek shall thereafter strive to correct any error within one week.

Testseek shall keep its Services running and accessible to Company at all times, however Testseek cannot be held responsible for Services downtime which is caused by outside factors which are not in Testseek's control.

Testseek shall immediately notify Company via e-mail, if Testseek becomes aware of any possible violation of third party rights or any statutory provision by the data contained in the Content and shall promptly remove any such data from the Content.

Testseek shall provide its Services with all due care and diligence and in accordance with best known practices and to the best interests of the Company.

2.2 Company Obligations.

Company will immediately notify Testseek if the Company becomes aware of any violation of the terms of this Agreement.

3. Warranties, Indemnification and Limitation of Liability

3.1 By Testseek

As long as Company follows the condition of usage of the Services and the Content, as specified in this agreement, Testseek shall indemnify and hold harmless Company against all liabilities, costs and expenses (including reasonable attorneys' fees) incurred by Company that arise out of any claim asserted by a third party that the Content infringes any intellectual property rights of any third party (except for claims for which Testseek is entitled to indemnification under Section 3.2, in which case Testseek shall have no indemnification obligations with respect to such claim) or any other statutory provisions, provided that Company, upon receipt of notice of a claim that could result in Testseek indemnifying Company pursuant to this subsection, gives prompt written notice to Testseek of the existence of such claim and permits Testseek, if it so requests, either to conduct the defense of such claim or to participate with Company in the defense thereof and in any settlement negotiations relating thereto on its own costs; provided, however, that Testseek shall not be required to pay any settlement amount that it has not approved in advance.

3.2 By Company

If Company is in breach with Testseek guidelines for usage of the Content or Services, as specified in this agreement, Company shall indemnify and hold harmless Testseek against all liabilities, costs and expenses (including reasonable attorneys' fees) incurred by Testseek that arise out of any claim asserted by a third party that involves, relates to or concerns (i) the marketing, sale, or promotion by Company of the Company websites, (ii) any use by Company of the Content which is in violation with this Agreement; (iii) any download and use of 3rd party copyrighted materials outside the Content; or (iv) any claim alleging that the Company Service infringes any patent, trade secret, copyright or other intellectual property rights of any third party; provided that Testseek, upon receipt of notice of a claim that could result in Company indemnifying Testseek pursuant to this subsection, gives prompt written notice to Company of the existence of such claim and permits Company, if it so requests, either to conduct the defense of such claim or to participate with Testseek in the defense thereof and in any settlement negotiations relating thereto; provided however, that Company shall not be required to pay any settlement amount that it has not approved in advance.

3.3 Disclaimer

Except for the details specified in the SLA, Testseek provides the Content "as is", without any express or implied warranties. For example, Testseek does not warrant the accuracy, timeliness, completeness, adequacy, companyability or fitness for a particular purpose of the Content, and Testseek shall not be liable to Company or to any third party with respect to any actual or alleged inaccuracy, untimeliness, incompleteness, inadequacy, uncompanyability or unfitness. Company shall not make any statement respecting the Content that is contradictory to or inconsistent with the foregoing statements.

4. Term and Termination

4.1 Term. The term of this Agreement (the "Term") shall begin on the date when this document has been read and approved by partner and continue until the date the final Service expires or terminates, or until this Agreement is terminated as provided below. If no expiration or termination date is mentioned, the first term is 12 month and the Agreement is automatically renewed after each new 12 month period.

4.2 Termination. Either party may terminate the Agreement without any prior notice. A termination of the Agreement for other reasons than breach will effect in a termination period of 90 days for which the Company will be charged by Testseek. During this period the company will continue to have access to Testseek Services as specified in the Order Form and/or SLA.

Upon termination or expiration of this Agreement for any reason, all rights and obligations of the parties under this Agreement shall be extinguished; except that all accrued payment obligations hereunder shall survive such termination or expiration. Company shall destroy and delete any and all Content in any form provided by Testseek to Company or owned by Testseek that are in the possession of Company within two weeks of the termination of this Agreement.

4.3 Termination for Cause. Either party may terminate this Agreement for breach, provided that the non-breaching party provides prior written, email, and/or other notice of such breach to the other party and an opportunity to cure such breach within ten (10) days.

5. Intellectual Property Rights

5.1 Company and Testseek's IP. Company retains all right, title and interest in and to the Company Web Sites. Testseek retains all right, title and interest in the Services. Third parties (such as the original review publications, publishers, retailers etc) retains the right to the Content.

5.2 Testseek's use of third party content and linking to original sources. Testseek works in accordance with widely recognized "[Fair Use](#)" guidelines defined by U.S. and EU copyright law. In short, these guidelines give anybody (including Testseek and its partners and Company) the right to re-publish quotes (texts) of original third party content, as long as the original source is clearly stated and only a limited portion of the original content is published. The Fair Use policies also gives limited rights to republish copies of images (only low resolution thumbnails are allowed).

To further honor the original publisher's work, Testseek always displays a link to the original source near the Content and thus drives free traffic to the Content sources ("Testseek link to sources policy").

As a comment, Testseek has never had any complaints or legal actions taken by any third party. In fact, Testseek receives requests from 3rd party publications to be included in our index, on a weekly basis. The reason for this is because Testseek operates in accordance with Fair-Use policies and also that Testseek drives free traffic to the publishers, as well as provide branding for them, on highly popular websites.

5.3 Legal responsibility for usage of the Content. The Content; logos, texts, photos, graphics, audio and/or video material aggregated by Testseek from third parties, such as review publications, retailers

and video publishers, are under the ownership of the original publisher. As such, Testseek cannot legally license the Content to the Company. Like Testseek, the Company is protected by the Fair Use policies and Testseek also takes the legal responsibility for the Company's usage of the Content according to the following conditions.

The legal responsibility for republishing of the Content on any website, falls on the party which hosts it. This has been determined in the European Court of Justice (see reference case C-466/12). As Testseek offers The Company both hosted and non-hosted data delivery options, the legal responsibility will be different for each option and the following paragraphs under section 5 aim to clarify which conditions applies for each option.

5.3.1 Testseek Hosted Services. If the Company uses Testseek's Hosted Services, Testseek takes full legal responsibility as long as the Company use any of Testseek's default design templates (for the Live API) without changing them, or if the Company alters the default templates, the Company must abide to the following conditions:

- The original publisher name (website domain name is sufficient) must be prominently displayed in proximity to any quotes, images or review summaries from the same.
- A link leading to the original content source (as specified by Testseek) must be prominently displayed in proximity to any quotes or images from a specific publisher, unless the original link has been determined as inactive by Testseek (if so, no link is required).
- Award images must be displayed in a size equal to or smaller than 120px to any side (height, width).
- Testseek retains the right to block the display of any award images which are determined as inappropriate by Testseek. Such blocking may be made using any technique, such as CSS or other. Upon its request, the Company retains the right to be informed of which award images are currently blocked by Testseek. If the Company, on its own accord, has retained the rights from the original publisher to use any specific award image which is currently blocked by Testseek, the Company is free to unblock the display of the award by modifying the concerned default template.

NOTE: Because the Company retains control of the design/layout through ownership of the design template (HTML, JS and CSS), it is possible for Company to change the template in a way that breaches the above conditions. In such a situation, the Company is in breach with this agreement and Testseek will have no legal responsibility.

5.3.1 Testseek Data Feed Services. If the Company stores/hosts the Content on their own servers (using Testseek Data Feed Services like the XML Export APIs), the legal responsibility falls on the Company. However, Testseek will take full legal responsibility as long as the Company abides by the following conditions:

- The original publisher name (website domain name is sufficient) must be prominently displayed in proximity to any quotes, images or review summaries from the same.

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- A link leading to the original content must be prominently displayed in proximity to any quotes or images from a specific publisher, unless the original link has been determined as inactive by Testseek.
- Award images must be displayed in a size equal to or smaller than 120px to any side (height, width).
- Testseek retains the right to block the display of any award images which are determined as inappropriate by Testseek. Upon its request, the Company retains the right to be informed of which award images are currently blocked by Testseek. If the Company, on its own accord, has retained the rights from the publisher to use any specific award image which is blocked by Testseek, the Company is free to unblock the display of this award.

5.4 Specific conditions apply for AUR Content. Because the AUR Content is available in detailed form (data from each specific user review) via Testseek Data Feed, it's technically possible for the Company to republish the AUR Content in any way it deems appropriate. However Testseek will not take any legal responsibility of the Company's republishing of the AUR Content unless the Company republish the AUR Content in the summarized form, as is demonstrated by Testseek's Live API default templates in the Company's back admin at <https://www.testseek.com/b2b/> (after login).

5.5 Specific conditions apply for AV Content. Testseek AV Content is aggregated from Youtube and therefore Testseek will take no legal responsibility unless the AV Content is republished in a way that is in accordance with Youtube's own conditions for republishing.

5.6 Informational liability. If Testseek or Company is contacted by any 3rd party content source, the contacted Party is obliged to inform the other Party within 2 business days.

6. General Provisions

Confidentiality. Each party (the "Receiving Party") undertakes to retain in confidence the terms of this Agreement and all other non-public information and know-how of the other party.

Independent Contractors. Company and Testseek are independent contractors under this Agreement.

Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of Sweden, excluding its provisions on conflicts of laws.

Choice of Venue. The parties hereby submit to the jurisdiction of, and waive any venue objection to Swedish courts, specifically "Tingsrätten" in Göteborg.

Force Majeure. Neither party shall be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of service, resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications or Internet services or network provider services, failure of equipment and/or software, other catastrophes or any other occurrences which are beyond such party's reasonable control.

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Changes in Agreement. In the event Testseek determines that this Agreement requires modification, Company shall be notified in writing of any such changes and shall have the right to cancel this Agreement within ten (10) days' notice of any change that Company deems unacceptable. Failure to cancel within the said period shall constitute acceptance of the new terms by Company.

Ethical Conduct. The parties agrees to comply with all laws and regulations including but not limited to those dealing with Internet commerce and privacy. Breach of this obligation by any party shall entitle the other party to terminate this Agreement immediately.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Agreement as of the signature by a Company representative on the Order Form.