



# E-Business Monitor

## E-BUSINESS MONITOR TERMS & CONDITIONS

*October2012*

# TERMS & CONDITIONS

## GENERAL

The following definitions apply to these Terms & Conditions:

- » Global E-Business Monitor – also referred to as ‘GEM’: the organization offering and providing products and ‘GEM’ platform(s) to members and registered users of the platform.
- » Member / participant / registered user: the party commissioning the engagement.
- » Contract: the agreement under which ‘GEM’ delivers products and ‘GEM’ platform(s) for Members and Registered users.

To become a participant / registered user / member, the applicant is required to fill in the online registration form on [mybenchmark.e-business-monitor.org](http://mybenchmark.e-business-monitor.org) or [www.e-business-monitor.org](http://www.e-business-monitor.org). As soon as he/she has completed the form and clicked upon the submit button, the contract offer is deemed to have been concluded under these Terms & Conditions. After the assignment and transmission of the transaction number by E-Business Monitor.org to the member (by email), the contract is considered concluded.

These terms and conditions apply to all products and ‘GEM’ platforms provided by ‘GEM’. All mentioned rates are excluding VAT.

‘GEM’ reserves the right to update and change the Terms of ‘GEM’ platform from time to time possibly without notice. If you keep using the E-Business Monitor.org platform, this means you consent to the changes.

If you violate any of our terms, we have the right to terminate your Account. You understand and agree that E-Business Monitor.org cannot be responsible for the content posted on the platform. You agree to use the platform at your own risk.

## MEMBERSHIP TERMS

- » You must be 18 years or older to become a member
- » You must provide your legal full name, a valid email address, and any other information requested in order to complete the signup process.
- » You cannot become a member as an individual, only as representative of a legal and registered business. You will provide all necessary

information when asked for to validate your business is legal and registered.

- » Your login may only be used by one person – a single login shared by multiple people is not permitted.
- » You are responsible for maintaining the security of your account and password. ‘GEM’ cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.
- » You are responsible for all content posted and activity that occurs under your account (even when content is posted by others who have accounts under your account).
- » You may not use the platform for any illegal or unauthorized purpose. You must not, in the use of the platform, violate any laws in your jurisdiction (including but not limited to copyright laws).
- » Registration by “bots” or other automated methods are not permitted.

## FEE, PAYMENT, REFUNDS, UPGRADING AND DOWNGRADING TERMS

- » **Fee:** Participants pay an annual fee for their Membership Plan. A Membership Plan lasts for the term of one year, starting on the date of the online application. The Membership Plan is automatically renewed unless the contract is terminated according to the conditions mentioned below.
- » **Online accounts:** a valid credit card is required for paying online accounts. Free accounts (registered members) are not required to provide a credit card number.
- » **Refunds on membership:** If you notify us within 7 days of purchase, you may be eligible for a refund on a membership if you haven't actually used any of the benefits (accessed the E-Business Monitor advanced reporting or benchmarking, etc.). As soon as you use any of the benefits or services of membership then you are no longer eligible for a refund.

## UPGRADING/DOWNGRADING:

- » **Upgrading** from the free plan (registered users) to any paying plan will end your free trial. You will be billed for your first month immediately upon upgrading.
- » **Payment:** for any upgrade or downgrade in plan level, your credit card that you provided will automatically be charged the new rate on your next billing cycle.
- » **Downgrading** your ‘GEM’ platform may cause the loss of content, features, or capacity of your Account. ‘GEM’ does not accept any liability for such loss.

- » **Membership by invoice:** an invoice for the annual fee will be sent after the online application form is received by 'GEM' or the Membership Plan is automatically renewed after one year. Full payment is required within 14 days after invoice date. All invoices unless otherwise stated carry a 5% late payment penalty. The online account of the Member will be activated after full payment is received
- » **Payment:** membership plans are billed in advance on a based on the terms of the membership level and is non-refundable. There will be no refunds or credits for partial months of 'GEM' platform, upgrade/downgrade refunds, or refunds for months unused with an open account. In order to treat everyone equally, no exceptions will be made.
- » **Taxes:** All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties.

## CANCELLATION AND TERMINATION

- » You are solely responsible for properly canceling your account.
- » You can cancel your account at any time in your payment account (PayPal, Google checkout, etc.)
- » For membership by invoice, you are required to notify us by regular post at least 1 month before your membership plan expires.
- » All of your personal profile content will be deleted from the 'GEM' platform upon cancellation. This information cannot be recovered once your account is cancelled.
- » 'GEM' has the right to suspend or terminate your account and refuse any and all current or future use of the 'GEM' platform for any reason at any time. Such termination of the membership will result in the deactivation or deletion of your Account or your access to your Account, and the forfeiture and relinquishment of all content in your Account. 'GEM' reserves the right to refuse 'GEM' platform to anyone for any reason at any time.

## MODIFICATIONS TO THE MEMBERSHIP PLANS

- » 'GEM' reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the 'GEM' platform (or any part thereof) with or without notice.
- » Prices of all Membership Plans, including but not limited to subscription plan fees, are subject to change upon 30 days notice from us. Such notice may be provided at any time by posting the changes to the 'GEM' website ([www.e-business-monitor.org](http://www.e-business-monitor.org)) or the 'GEM' platform itself.
- » 'GEM' shall not be liable to you or to any third party for any modification, price change,

suspension or discontinuance of the 'GEM' platform.

## GENERAL CONDITIONS

- » Your use of the 'GEM' platform is at your sole risk. The 'GEM' platform is provided on an "as is" and "as available" basis.
- » Technical support is only provided to paying members and is available via email and (when available) through an online ticket system.
- » You understand that 'GEM' uses third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the 'GEM' platform.
- » You must not modify, adapt or hack the 'GEM' platform or modify another website so as to falsely imply that it is associated with the 'GEM' platform.
- » You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the 'GEM' platform, use of the 'GEM' platform, or access to the 'GEM' platform without the express written permission by 'GEM'.
- » Verbal, physical, written or other abuse (including threats of abuse or retribution) of any 'GEM' member of registered user, employee or team member will result in immediate account termination.
- » You understand that the technical processing and transmission of the 'GEM' platform, including your Content, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.
- » You must not upload, post, host, or transmit unsolicited email, SMSs, or "spam" messages.
- » You must not transmit any worms or viruses or any code of a destructive nature.

## WARRANTY

- » 'GEM' does not warrant that
  - i. the 'GEM' platform will meet your specific requirements
  - ii. the 'GEM' platform will be uninterrupted, timely, secure, or error-free
  - iii. the results that may be obtained from the use of the 'GEM' platform will be accurate or reliable
  - iv. the quality of any products, information, or other material purchased or obtained by you through the 'GEM' platform will meet your expectations
  - v. any errors in the 'GEM' platform will be corrected.
- » You expressly understand and agree that 'GEM' shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other

intangible losses (even if 'GEM' has been advised of the possibility of such damages), resulting from:

- i. the use or the inability to use the 'GEM' platform
  - ii. the cost of procurement of substitute goods and 'GEM' platforms resulting from any goods, data, information or 'GEM' platforms purchased or obtained or messages received or transactions entered into through or from the 'GEM' platform
  - iii. unauthorized access to or alteration of your transmissions or data; (iv) statements or conduct of any third party on the 'GEM' platform
  - iv. or any other matter relating to the 'GEM' platform.
- » The failure of 'GEM' to exercise or enforce any right or provision of the Terms of 'GEM' platform shall not constitute a waiver of such right or provision. The Terms of 'GEM' platform constitutes the entire agreement between you and 'GEM' and govern your use of the 'GEM' platform, superseding any prior agreements between you and 'GEM' (including, but not limited to, any prior versions of the Terms of 'GEM' platform).
  - » By registering, you allow E-Business Monitor to use your company information in marketing materials to indicate you / your organization is a registered participant. Each Member / organization has the opportunity to opt out at any time.

## REPORTING / BENCHMARKING FUNCTIONALITIES:

- » The platform contains Reports and other content that users may access. Some content may only be accessed by Members in accordance with the relevant Membership Level and other content is free of charge. 'GEM' grants the User a license to use the Reporting and other content solely for their own information purposes.
- » Limitations of use: permit the User to do any of the following without the prior written consent of 'GEM':
  - i. download, store, reproduce, transmit, display (including without limitation display on any intranet or extranet site), copy, sell, publish, distribute and/or provide access to;
  - ii. sub-license, rent, lease, transfer or assign any Intellectual Property Rights in the Reports, to any other person, or attempt to do any of the foregoing;
  - iii. disclose the Reports whether in part or in their entirety to any third party, including any associated or affiliated company;
  - iv. in any way commercially exploit any of the Reports' content; or
  - v. use the Reports for any unlawful purpose.
- » Any breach by the User of any of the terms of the license will entitle us to terminate your license and your Membership.

- » You agree to pay the relevant Fees for Membership, if any, set out on the Site in order to access certain Reporting functionalities. Fees set out on the Site may change from time to time and any change will be posted on the Site and will take effect for all Memberships and functionalities accessed after the change. Where applicable, payment must be prepaid in accordance with the payment methods set out on the Site before access to certain Functionalities is permitted, and no license shall be granted until we receive payment in full for the relevant Reporting / benchmarking functionalities. Fees paid to us for Reporting / benchmarking functionalities shall be non-refundable.

## CONTENT OWNERSHIP

- » 'GEM' does not claim ownership of the materials in your own Account. By explicitly posting, uploading, inputting, providing or submitting your content to the community section of 'GEM' ("User-posted Content"), you are granting 'GEM' permission to use User-posted Content in connection with the operation of their Internet businesses including, without limitation, the rights to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat User-posted Content; and to publish your name in connection with User-posted Content. 'GEM' reserves the right to use aggregated meta-data of materials in your own Account in connection with the operation of their Internet businesses including, without limitation, statistics on usage.
- » No compensation will be paid with respect to the use of User-posted Content, as provided herein. 'GEM' is under no obligation to post or use any User-posted Content you may provide and may remove any User-posted Content at any time in 'GEM's sole discretion.
- » By posting, uploading, inputting, providing or submitting User-posted Content you warrant and represent that you own or otherwise control all of the rights to your User-posted Content as described in this section including, without limitation, all the rights necessary for you to provide, post, upload, input or submit User-posted Content.
- » 'GEM' does not pre-screen User-posted Content, but 'GEM' and its designee have the right (but not the obligation) in their sole discretion to refuse or remove any Content that is available via the 'GEM' platform.
- » User-posted content, unless source quoted, is licensed under a Creative Commons Public Domain License.

## USE OF COMMUNICATION

- » 'GEM' may contain bulletin boards, chat areas, news groups, forums, communities, personal web pages, calendars, and/or other message or

communication facilities designed to enable you to communicate with the community at large or with a group, you agree to use the community only to post, send and receive messages and material that are proper and related to 'GEM'.

- » 'GEM' has no obligation to monitor the Communication on the 'GEM' platform. However, 'GEM' reserves the right to review materials posted to the 'GEM' platform and to remove any materials in its sole discretion. 'GEM' reserves the right to terminate your access to any or all of the Communication on the 'GEM' platforms at any time without notice for any reason whatsoever.
- » 'GEM' reserves the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in 'GEM's sole discretion.
- » 'GEM' does not control or endorse the content, messages or information found in any Communication on the 'GEM' platform and, therefore, 'GEM' specifically disclaims any liability with regard to the Communication on the 'GEM' platform and any actions resulting from your participation in any Communication on the 'GEM' platform. Members and registered users are not authorized 'GEM' spokespersons, and their views do not necessarily reflect those of 'GEM'.
- » Materials uploaded to the 'GEM' platform may be subject to posted limitations on usage, reproduction and/or dissemination. You are responsible for adhering to such limitations if you download the materials.

#### PLATFORM MEMBER DIRECTORY:

- » The registration for Membership process may include Members into a Member Directory service. All Information provided in the general section of the application form will be part of the public profile of the social community and the public member directory. Each Member / organization has the opportunity to opt out of the Member Directory service at any time.
- » You acknowledge and accept that 'GEM' does not necessarily exercise any review or editorial control over the content of the Member Directory. Accordingly, "GEM' liability and responsibility for the content of the Member Directory on the Site and any damage it may cause is hereby disclaimed and excluded to the maximum extent permitted by law. The listing of a Member is not an endorsement or approval of any such Member and if you decide to have any dealings with any Member you do so at your own risk.

#### LINKS TO THIRD PARTY SITES

- » The 'GEM' platform may contain links to other Web Sites ("Linked Sites"). The Linked Sites are not under the control of 'GEM' and 'GEM' is not

responsible for the contents of any Linked Site, including without limitation any link contained in a Linked Site, or any changes or updates to a Linked Site. 'GEM' is not responsible for webcasting or any other form of transmission received from any Linked Site. 'GEM' is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by 'GEM' of the site or any association with its operators.

#### COPYRIGHT AND TRADEMARK

- » All contents of 'GEM' websites are copyrighted. All rights reserved.
- » The names of actual companies and products mentioned herein may be the trademarks of their respective owners.
- » Any rights not expressly granted herein are reserved.

#### TERMS OF 'GEM' PLATFORM CONTACT

- » Any dispute or claim arising out of or relating to these Terms and Conditions or 'GEM' Services shall be settled by an arbitration tribunal designated by 'GEM'. The arbitration shall be conducted in the Netherlands.
- » These Terms and Conditions shall be governed in all respects by Dutch law as if the contract was wholly entered into and wholly performed within the Netherlands. The parties hereby submit to the exclusive jurisdiction of the Dutch courts.
- » Questions about the Terms of 'GEM' platform should be sent to [info@e-business-monitor.org](mailto:info@e-business-monitor.org).

ABOUT US

# E-BUSINESS MONITOR

Our mission is to help advance the industry by providing a global, independent and comprehensive standard in E-Business performance monitoring.

E-Business Monitor | [info@e-business-monitor.org](mailto:info@e-business-monitor.org) | Twitter: [@ebusmonitor](https://twitter.com/ebusmonitor)