

General Terms and Conditions of the sg media + marketing GmbH

Mühlenkamp 63b , 22303 Hamburg

Registered office: Hanseatic city of Hamburg, commercial register no. 109501

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### **1. Preface**

These terms and conditions shall apply for all, also future business relationships between the sg media + marketing GmbH (sg media) and its clients (client) as well as its suppliers. In particular, they shall also apply to the ancillary and additional services which are to be rendered in this connection, particularly however to the areas of the

- marketing of own addresses (email, post, telephone, mobile)
- marketing of third party addresses (list broking)
- display advertising
- address generation (co-sponsoring, co-registrations,...)
- general services such as consultation, website design, affiliate marketing.

sg media will solely be active for entrepreneurs in terms of § 14 German Civil Code.

Varying, opposing or additional GTC from the client shall not become an integral part of the contract unless the validity is explicitly stipulated in writing upon contract conclusion.

### **2. Address generation and circulation**

sg media shall grant the client the substantiated authorisation which is potentially in the contract to use third party data for business purposes, generally for his/her own advertising purposes for the stipulated duration while maintaining the applicable laws (in particular data privacy laws and competition law).

Unless otherwise agreed upon, all addresses provided by sg media shall be intended for the client's own use in line with his/her direct mail campaigns.

Any resale or distribution for use by third parties shall be strictly prohibited, or otherwise shall require the prior authorisation by sg media and shall be adequately compensated for according to a separate agreement.

The submission of a control address suffices for the verification of improper use which was included in the data sets for this purpose. In the event of improper use of the data sets, the client shall owe a contractual penalty for each individual misuse amounting to € 5000; sg media shall expressly reserve the right to assert separate claims for damage.

Data sets shall be provided on a suitable data medium.

Alternatively, sg media shall be authorised to offer these to the client on the Internet in an accessible and storable form to download or to send these via email.

The acceptance of the order shall be effected subject to the punctual self-supply of sg media, provided that it has concluded a respective tangible hedging transaction with a third party for this and this third party has not supplied the addresses. In such an event, sg media shall be obligated to immediately inform the client of the non-availability and shall immediately reimburse possibly rendered return services of the client.

In the event that sg media acquires addresses itself, sg media shall not be obligated to accept all data provided that a client's requested allotment has meanwhile been otherwise fulfilled for example or the client refuses the acceptance for other reasons.

### **3. Display advertising**

sg media conveys and sells advertising inventory such as banners, buttons, pop-ups, interstitials, sticky ads on websites and within third party advertising networks.

The supply of the advertising material must be effected 2 weekdays before the beginning of the campaign at the latest in at least four standard sizes (468x60, 728x90, 300x250, 120x600) in the image format gif and/or jpg.

No responsibility is taken for the proper delivery in the case of a delayed supply or for alterations and/or adjustments on the advertising material which become necessary after the supply and which the client is responsible for. The client shall bear the costs for the compilation and supply of the materials/templates. This shall also apply to the costs for the alterations which he/she is responsible for. The supplier agrees to carry out subsequent delivery to a justifiable extent for verifiable metering variances with the ad server of the client of sg media.

#### **4. Email marketing**

sg media conveys, sells and rents out permission addresses for email stand-alone campaigns from its own supplies as well as from third party address lists.

The reservation of punctual self-supply under item 2 applies accordingly.

The supply of the advertising material from the client to sg media must be effected at least 2 weekdays before the beginning of the campaign. No responsibility is taken for the proper delivery in the case of a delayed supply or for alterations and/or adjustments on the advertising material which become necessary after the supply and which the client is responsible for. The client shall bear the costs for the compilation and supply of the materials/templates. This shall also apply to the costs for the alterations which he/she is responsible for.

sg media shall be permitted to exceed the amount of contacts booked in the order at its sole discretion. No obligation towards sg media whatsoever shall result from this. The contractually stipulated amount of contacts shall always be liable for payment.

A cancellation after contract award shall be liable for payment at 25% of the order value, 48 h before dispatch at 50% and 24 h before dispatch at 100%.

#### **5. Duties and responsibilities of the client and the suppliers**

The client as well as the supplier shall support the work of sg media and shall make all information available which it requires for the fulfilment of its duties.

sg media shall ensure a permanent technical availability of its services from which variations of approx. 5 % in the annual average shall be possible. Excluded thereof are times in which the delivery is not feasible because of disturbances which are not within the control of sg media (force majeure, third party negligence, etc.).

The supplier and/or website operator shall ensure sg media a permanent technical availability of his/her website. Excluded thereof are times in which the website is not accessible because of disturbances which are not within the control of the company (force majeure, third party negligence, etc.).

Advertising and working material including possible data sets and data bases which are made available by sg media shall remain its property. As far as it is not intended or used for the transfer to clients, the advertising and working material shall be returned by the agency upon termination of the contract without special request.

Deadline shifts shall only be possible up to 3 weekdays before dispatch. The supply of templates and subject headings must be effected up to 48 h before dispatch. Alterations on template, tracking or subject heading shall be possible once up to 24 h before dispatch otherwise € 105.00 plus VAT / alteration shall be charged. Unless otherwise stipulated the order shall apply for one template with one subject heading. The client shall allow the sg media + marketing GmbH the incorporation in its reference list. The sg media + marketing GmbH shall be entitled to commission subcontractors.

#### **6. Provision of base material by the client**

Provided that the client makes design elements, logos, texts and/or graphics available for the advertising banners, websites, newsletters, mailings or the like which are to be created, the client and sg media jointly agree upon the technical feasibility of the base material made available by the client.

The client shall grant sg media the non-exclusive limited right to use the base material for the duration of the contract. In doing so, the client shall guarantee that he/she is entitled to make the base material available for the purpose of the performance of the contract.

In the event that third parties assert rights for infringements based on the base material, the client shall be obligated to indemnify sg media from any liability towards third parties, to support it in the legal defence and to assume possible sums of indemnity plus the costs for an appropriate legal defence upon the request of sg media.

#### **7. Transactions subject to commission**

sg media shall obtain a commission for transactions concluded with advertisers and/or data set suppliers during the contract period.

Turnover subject to commission is the invoice net amount, for orders via advertising brokers the agency net amount in which, if applicable, also subsequent additional charges or credits shall be taken into account and that in each case exclusive of the value added tax. In the case of ad specials, the payment for the screening of the ad special in line with the online service which is stipulated in each individual case shall be regarded as the turnover subject to commission.

For extraordinary price changes or new product formats which make additional potential sales volume accessible as well as in the event of the transfer of new electronic publications, the rate of commission can be amicably reascertained as of the time period of alteration according to the new circumstances and in consideration of all factors.

#### **8. Arising of the commission claim and invoicing**

sg media shall grant its address and data set suppliers a commission to be separately stipulated for the transactions concluded with the clients during the contract period.

The suppliers' claim for commission shall not arise until payment by the client (advertisers/data set customers). sg media shall also be entitled to deduct possible discounts which the client deducts from the supplier's invoice.

The billing of the invoiced advertisement and/ or data turnover shall be effected with the client.

The client shall immediately review the invoices which are conveyed to him/her. As far as he/she does not raise any objections to the invoices within 2 weeks after receipt, these shall be deemed accepted.

The supplier's commission plus the statutory value added tax shall be due with payment receipt by sg media.

Provided that clients (advertisers or data set customers) do not pay their invoices after the 2<sup>nd</sup> reminder, the supplier of sg media shall be entitled to assign his/her part of the claim towards the third party.

#### **9. Customer protection**

In the event of advertisement marketing, clients of sg media shall not be permitted to conclude similar marketing agreements with other providers during the duration of this contract. Furthermore, sg media shall receive a commission rate amounting to . . . .% plus statutory value added tax for such agreements which are concluded within 3 months after termination of contract with such new customers which were still acquired by sg media.

In the event of an address data purchase, the client is of course at liberty to acquire other data sets from other parties. He/She must merely ensure that these are not irreversibly mixed with one another.

#### **10. Acceptance**

The client shall be obligated to immediately inform sg media of possible defects after receipt. This shall apply to possible advertising material as well as the delivery of data sets.

sg media shall be obligated to remedy reported defects within an appropriate period and particularly in the case of data sets shall have the right to an adequate remedy. In the event that the client does not report any defects, the created and delivered product or the respective address data base extract shall be deemed accepted at the latest two weeks after presentation or rather delivery. Notice of defect can only be declared in the written form.

#### **11. Payment**

The amount of payment shall comply with the prices (preparation, setup costs, etc.) listed in the offer or rather the order confirmation. Should the client be in default of payment, sg media can discontinue any work and further deliveries until receipt of payment.

Possible stipulated deadlines for execution shall be prolonged accordingly. Other rights of sg media according to this contract and according to the statutory provisions shall remain reserved.

Should the client be in default of payment for the duration of more than 2 weeks or should the client be in default of payment with an amount of more than EUR 3000 despite a written reminder, sg media shall then be entitled to terminate this contract without notice. Indemnity claims and other statutory claims of sg media shall remain unaffected.

#### **12. Liability**

Irrespective of the following provisions, sg media shall only be liable for damages of the client provided that these were caused by intentional or grossly negligent acts or by the breach of fundamental contractual obligations. In the event of a slightly negligent breach of fundamental contractual obligations, sg media shall solely be liable to the extent of typical and foreseeable damage.

The liability for data loss shall be limited to the typical reestablishment costs which would have accrued for the routine fabrication of backup copies according to risks.

The preceding provisions shall also apply in favour of the employees of sg media.

The disclaimer or rather the limitation of liability shall not apply to damages which are related to health effects, human injury or loss of life as well as to claims for product liability and in case of an acceptance of guarantee.

**13. Data protection**

sg media shall collect, process and use the personal data of the client in an automated procedure as far as it is required for the justification, arrangement or alteration of this contract as regards content (inventory data). Furthermore, sg media shall collect, process and use usage and billing data of the client.

**14. Severability clause, applicable law, jurisdiction**

In the event of the invalidity of one or more of the provisions regulated herein, this shall not affect the validity of the remaining portions of the contract. The contractual parties shall agree upon a legally effective substitute provision which comes closest to the economic purpose of the invalid provision.

To all intents and purposes, this contract shall be subject to the laws of the Federal Republic of Germany without reference to the collision of legal principles. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not be applicable.

As far as permissible, the jurisdiction for all disputes resulting from this contract shall be Düsseldorf and Hamburg. Subsidiary agreements to this contract were not concluded between the parties. The written form shall be required for the validity of subsidiary agreements.

Hamburg, May 2009