

General Terms and Conditions of Business for Advertisers

Introduction

affilinet shall make a platform (hereinafter referred to as Platform) available in the internet under the domain affili.net, which will allow business partners of affilinet (hereinafter referred to as Advertiser) to operate affiliate programmes with the registered Publishers of affilinet (hereinafter referred to as Publishers).

The object of affiliate programmes is to render media services to support the Advertiser when selling goods and services online on a success basis. These Terms and Conditions form the basis for operating an affiliate programme at affilinet. They also deal with any obligations on the part of the Advertiser with respect to Publishers.

1. Area of applicability

1.1. Deliveries, services, offers and contracts between affilinet and the Advertiser are based exclusively on the following Terms and Conditions of Business. Conflicting terms and conditions of business of the Advertiser are invalid unless their validity has been expressly agreed between affilinet and the Advertiser. Counterconfirmations by the Advertiser which refer to its terms and conditions of business are herewith opposed.

1.2. Unless otherwise agreed between affilinet and the Advertiser, collateral agreements and modifications and amendments to the contract must be in writing in order to be valid.

1.3. Employees of affilinet are not entitled to reach verbal collateral agreements or give verbal assurances.

2. Definitions

In these Terms and Conditions of Business and all the Advertiser's contracts with affilinet, the following definitions apply:

Account is the access gained to the affilinet platform after registration by the Advertiser and activation by affilinet.

Valid click A click is valid if a user voluntarily and consciously clicks on a hyperlink for the Advertiser's affiliate programme on the Publisher's website, and the linked Advertiser's website is called up. Clicks which entail a mandatory action, such as, for example, sending an SMS message, participation in a competition or using the click in a paid e-mail system are only permitted with the Advertiser's prior consent. If such consent has not been obtained, clicks generated

thereby are not counted as valid. Valid clicks are recorded and verified on the basis of the affilinet transaction system and determined by affilinet in good faith at its reasonable discretion, i.e. in compliance with these Terms and Conditions of Business and taking into account the parties' mutual interests.

- Valid lead** A lead is valid if a user executes a click and then carries out a specific defined action (qualified action) on the Advertiser's website. Valid leads are ascertained and specified like clicks, whereby with respect to the execution of the qualified action, they are recorded and verified on the basis of the affilinet transaction system and specified by affilinet at its reasonable discretion, i.e. in compliance with these Terms and Conditions of Business and taking into account the parties' mutual interests.
- Valid sale** A sale is valid if a user executes a click and then concludes a contract with respect to utilisation of goods subject to payment or a service subject to payment on the Advertiser's website. Valid sales are ascertained or specified as for clicks, whereby with respect to the conclusion of a contract with respect to goods or a service subject to payment this is recorded and verified on the basis of the affilinet transaction system, and specified in good faith by affilinet at its reasonable discretion, i.e. in compliance with these Terms and Conditions of Business and taking into account the parties mutual interests.
- Hyperlink** is a link to the Advertiser's website provided by the Advertiser via the platform for use by the Publisher and identified as such on the Publisher's website.
- Pay-per-click** Affiliate programme: By implementing a hyperlink on the Publisher's website affilinet is entitled to a fee for passing visitors on to the Advertiser's website.
- Pay-per-lead** (fixed amount per valid lead) affiliate programme: By implementing a hyperlink on the Publisher's website affilinet is entitled to payment of a fee for passing visitors to the Publisher's website on to the Advertiser's website and brokering a lead (execution of a specific defined action by a user on the Advertiser's website).
- Pay-per-sale** (percentage-based fee per valid sale) affiliate programme. By implementing a hyperlink on the Publisher's website an entitlement to payment of a fee is incurred by passing visitors to the Publisher's website onto the Advertiser's website and brokering the sale of the Advertiser's goods or services.
- User** any natural person who voluntarily and consciously calls up the Publisher's or Advertiser's website, i.e. without compulsion or deception, without receiving payment from the Publisher or a third party for this – apart from within the scope of a bonus system run by affilinet

Website (of the Publisher)

Website is the Publisher's internet offer under the (main) domain stated and registered by the Publisher with the contents checked by the Advertiser or any other domain or a sub-page, if it is identical content-wise.

Website (of the Advertiser)

is the Advertiser's internet offer under the exactly stated URL, under which the latter sells or advertises goods and/or services online and to which the hyperlink to be used refers, pursuant to the provisions of the affiliate programme by the Publisher.

3. Registration on the affilinet platform

- 3.1. When registering on the affilinet platform, the Advertiser must accept these conditions of participation.
- 3.2. The Advertiser shall be responsible to affilinet and the Publisher for the completeness and accuracy of its disclosures, and with respect to the affiliate programme offered. The Advertiser shall be obliged to keep the registration data and information with respect to its affiliate programme up to date.
- 3.3. Registration for access to the platform, its confirmation by affilinet and the forwarding of access data per email do not constitute the conclusion of a contract between affilinet and the Advertiser. The Advertiser shall initially only receive the actual possibility of offering affiliate programmes in consultation with affilinet with access to the platform.

4. Offer and contract formation

- 4.1. Separate contracts shall be concluded between affilinet and the Advertiser with respect to the rendering of services for supporting the Advertiser in the online distribution of goods and services on a success basis by the respective Publisher of affilinet, in compliance with these Terms and Conditions of Business and under the terms and conditions of the respective affiliate programme.
- 4.2. affilinet shall send the offer for participation in an affiliate programme through its respective Publisher, via the platform, by advertising the Publisher's website to the Advertiser accordingly. Conditions or provisos may not be attached to the offer submitted for affilinet by the Publisher, with effect for affilinet, which differ from the terms and conditions of the affiliate programme. The Advertiser shall undertake to check the offer within a time period of 3 weeks starting from submission of the offer and either reject or accept it.
- 4.3. Acceptance of the offer shall be declared by the Advertiser to the Publisher with effect for affilinet. The Advertiser shall exclusively decide whether to accept a Publisher on the Advertiser's partner programme. Acceptance of the offer shall be

declared by the Advertiser in the form of acceptance of the tender for the specific affiliate programme and exclusively on the terms and conditions specified on the platform.

- 4.4. By accepting the offer, affilinet shall be entitled, but not obliged, to render services to support the respective Advertiser within the scope of these terms and conditions of business and on the terms and conditions of the respective affiliate programme through its Publisher.

The Advertiser shall not be entitled to receive corresponding media services to support the affiliate programme from affilinet or from the Publisher of affilinet. However, if affilinet renders services through its Publisher pursuant to these Terms and Conditions of Business, the Advertiser has to reimburse affilinet for this.

5. Service specification right/service volume and rendering of services

- 5.1 affilinet shall be entitled to continuously further develop the platform and adapt it to technical developments.
- 5.2. Media services to support the Advertiser when selling goods and services online shall be rendered exclusively by the Publisher. As regards the type, scope and design of the advertising for the Advertiser's partner programme, the Publisher shall act in the interests of the Advertiser and not in fulfilment of an obligation incumbent upon affilinet with respect to the Advertiser. The Advertiser shall reserve the right to define more closely the Publisher's responsibilities beyond the obligations contained in section 13, through the separate conditions of participation of the partner programme and to stipulate additional obligations of the Publisher with respect to the Advertiser. Publishers shall in this respect not work for affilinet as vicarious agents.
- 5.3. affilinet shall also be entitled to transfer the rendering of services or parts thereof for independent execution to third-party service providers or vicarious agents.

6. Remuneration

- 6.1. affilinet shall allow the Advertiser to operate pay-per-click affiliate programmes, pay-per-lead affiliate programmes, pay-per-sale affiliate programmes or a combination of several of the aforementioned types of programmes. A claim to remuneration exists in the case of valid clicks, valid leads or valid sales created pursuant to the terms and conditions of the respective affiliate programme pursuant to these Terms and Conditions of Business. The net remuneration by affilinet consists of the Publisher's net remuneration share plus a further regular payment of 30%.
- 6.2. For pay-per-click affiliate programmes, affilinet shall be credited with the fixed amount pursuant to the affiliate programme for each valid click, or the corresponding amount will be debited from the Advertiser's account at affilinet.
- 6.3. Clicks created automatically through technical equipment (e.g. click generators) or initiated by compulsion or deception do not have to be refunded by the Advertiser.

- 6.4. All clicks are deducted from the Advertiser's account at affilinet in the course of the daily evaluation of the transaction system. Debiting of the Advertiser's account does not amount to recognition that the recorded clicks constitute the entirety of the completely recorded valid clicks.
- 6.5. Initially, the comments in sections 6.2 to 6.3 shall apply accordingly to remuneration for pay-per-lead affiliate programmes, pay-per-sale affiliate programmes or a combination of the aforementioned types of programmes. Recorded, but not yet verified leads or sales shall not yet be deducted from the Advertiser's account, but recorded as reserved turnover. Debiting of the Advertiser's account at affilinet does not amount to recognition that the leads constitute the entirety of the completely recorded valid leads, or that the sales are valid sales. In the case of pay-per-sale affiliate programmes with percentage-based remuneration, this is calculated according to the net sale value of the goods or services (excluding additional services and value added tax)
- 6.6. The Advertiser shall reserve the right to prove that the leads or sales recorded by affilinet are not valid leads or valid sales, pursuant to the terms and conditions of the affiliate programme and these Terms and Conditions of Business. The Advertiser shall have the possibility to release the reserved leads or sales via the platform and recognise them as valid leads or valid sales. If the Advertiser does not make a statement within a reasonable time period of not more than 45 days after a lead or sale has been recorded, affilinet may request that the Advertiser release the reserved leads or sales or files or that it file justified objections against the recorded leads or sales within a time period of 2 weeks after receipt of the requests.
- If the Advertiser does not file any justified objections to recorded leads or sales, the leads or sales shall be deemed valid leads or valid sales recognised by the Advertiser. affilinet shall point out the running time period and this legal consequence when making the request.
- 6.7. Subject to other agreements, affilinet shall set up a validation period of 60 days for the Advertiser in the case of reserved leads or sales for which the Advertiser has so far not filed any justified objections, after the expiry of which, noted leads or sales will be released as valid leads or valid sales. Nevertheless, the Advertiser shall still be obliged to release valid leads or sales prior to the expiry of this time period, unless justified objections exist.
- 6.8. The Advertiser shall provide information on the clicks, leads and sales it ascertains and with respect to its corresponding objections upon request by affilinet. The Advertiser herewith already consents to its information being checked by affilinet for its completeness and accuracy in terms of content, through the presentation of suitable documents, customer records and log files. affilinet is in this respect also entitled to have Advertiser's disclosures verified by an auditor obligated to secrecy during normal office hours by inspecting the corresponding business documents at the Advertiser's premises. The costs for this shall be borne by affilinet in the case of deviations (with regard to the clicks, leads or sales confirmed by the Advertiser compared to the actual clicks, leads or sales) of less than 2.5%; otherwise the costs shall be borne by the Advertiser.

7. Mode of payment

- 7.1. Payments by the Advertiser shall be processed via an account held by the Advertiser at affilinet. Interest will not be paid on the credit balance in the account. Subject to another agreement, the Advertiser must pay in a still-to-be agreed start balance to affilinet for this affiliate programme when starting an affiliate programme.
- 7.2. If the Advertiser's credit balance for a specific affiliate programme falls to an amount less than € 25.00, due to amounts debited from the account, affilinet shall be entitled to claim payment of the difference up to the amount of the originally agreed start balance from the Advertiser.
- 7.3. If the Advertiser's balance is insufficient to cover the reserved sales (see section 6.5 above), affilinet shall be entitled to claim a further payment from the Advertiser up to the amount of the reserved sales, but at least up to the amount of the agreed start balance.
- 7.4. affilinet shall be entitled to reconcile the Advertiser's account for an affiliate programme on a daily basis, and claim payment from the Advertiser pursuant to the terms of payment specified here.
- 7.5. Invoices issued by affilinet are payable immediately after receipt of the invoice. The Advertiser is not entitled to the deduction of discount.
- 7.6. If the Advertiser is a businessman or public legal entity, it shall only be entitled to offset, retention or reduction, even if counterclaims or notices of defect are asserted, if the counterclaims are undisputed or have been finally established in law. However, the Advertiser is also entitled to retention due to counterclaims arising from the same contractual relationship.

8. Obligations of the Advertiser with respect to affilinet and Publishers

- 8.1. The Advertiser shall ensure within the scope of its technical possibilities that its website (including all entries in search engines, directories or link-listed third parties) is designed and presented in such a way that valid clicks, valid leads or valid sales are generated on the Advertiser's website by the user.
- 8.2. The Advertiser shall provide affilinet or the Publishers of affilinet with the hyperlinks required for participation in an affiliate programme, in addition to the URL of the respective page of the Advertiser's website, for retrieval. The Advertiser shall provide affilinet with the advertising media that affilinet may use on the Publisher's website. affilinet shall be entitled to utilise the Advertiser's advertising media and its name and brands of the goods or services advertised via affilinet as a reference within the scope of its own acquisition.
- 8.3. The Advertiser shall undertake to design its website in such a way that industrial property rights of third parties, including the copyright, are not breached and that the applicable law, especially also data protection, is not infringed. The Advertiser, and also the Publisher of affilinet, may exclusively utilise personal data which has come to its notice for implementing the contract and for its term.

- 8.4. The Advertiser shall be obliged to affix provider identification to its commercial offer, section 6 TDG (Teleservices Law). The Publisher shall be obliged to design its website in compliance with the statutory regulations for consumer protection. Representations of violence, sexually explicit or pornographic contents or discriminating statements or representations with respect to race, sex, religion, nationality, handicaps, sexual orientation or age are not admissible on the Advertiser's website and/or in connection with participation in affiliate programmes of affilinet. The design of the website may not be capable of impairing the reputation or appraisal of the goods or services, the brand or the business activities of affilinet.
- 8.5. affilinet may create hyperlinks to the Advertiser's website in whatever quantity, at any location on the Publisher's website. The Advertiser may, however demand, that placement of the hyperlink be changed if this impairs the reputation or appraisal of the goods or service, the brand or the business activities of the Advertiser.
- 8.6. The Advertiser shall also accept the obligations of the Advertiser stipulated here in Section 8 with effect to the advantage of the respective Publishers of affilinet.

9. Access and contract term

- 9.1. The Advertiser shall be granted unlimited access to the affilinet platform.
- 9.2. The contract between affilinet and the Advertiser with respect to the rendering of services to support the respective advertiser with the online distribution of goods and services on a success basis is concluded for an indefinite period. The contract may be terminated by both sides with statutory notice of termination, with a notice period of 2 days effective at the end of a current calendar week.
- 9.3. Termination according to these regulations must be declared in text form. affilinet Shall also be entitled to declare termination in another form.

10. Deactivation of the account and termination

- 10.1. affilinet shall be entitled to deactivate access to the platform and inform the Advertiser thereof if the latter has not operated an affiliate programme for a period of 3 months.
- 10.2. affilinet shall be entitled to terminate all contracts relating to participation in an affiliate programme with statutory notice of termination, with a notice period of one day, effective at the end of a calendar week, and to deactivate the Advertiser's access if the start balance of the affiliate programme (see section 7.1 above) has not been used for 6 months.
- 10.3. The Advertiser and affilinet may reserve the right to termination without notice. affilinet shall be entitled to terminate all contracts for good cause without complying with a notice period and deactivate access in the event of serious or persistent breaches of these Terms and Conditions of Business by the Advertiser, namely, in particular, obligations pursuant to section 8 of these Terms and Conditions.

10.4. Termination according to these regulations must be in writing. affilinet shall also be entitled to declare termination in another form. Notification of the deactivation of access is always possible, regardless of form.

11. Termination of the contract

11.1. Should access be deactivated, a possible existing credit balance will be accounted for.

12. Legal relationship with Publishers of affilinet

12.1. The contract relating to the rendering of services to support the Advertiser with the online distribution of goods and services on a success basis is concluded exclusively between affilinet and the Advertiser pursuant to section 4.

12.2. The Publishers of affilinet have given the following undertakings to affilinet, equally with effect with regard to the Advertiser:

- to design and present their website, including all entries in search engines, directories or link-listed third parties, in such a way that valid clicks, valid leads or valid sales are exclusively generated on the Advertiser's website by the user.
- not to modify the HTML code or banner provided by the Advertiser and only to use the provided advertising media on the Publisher's website,
- only to use the advertising media in connection with participation in an affiliate programme and not to forward information or advertising media to third parties,
- only to use names, protected brands and trademarks, the company or logos of a third party – especially of the Advertiser – if the Publisher has obtained the legal owner's consent,
- to design its website in such a way that industrial property rights of third parties, including copyright, are not breached and the applicable law, especially also data protection, is not infringed,
- only to send e-mails with advertising for affilinet or the affiliate programmes in compliance with statutory guidelines (especially section 7 (1-3) UWG (Competition Act) and current court decisions (e.g. judgement by the German Federal Court of Justice (BGH) of 11/03/2004, Ref. I ZR 81/01),
- to design their website in compliance with statutory regulations on consumer protection,
- not to carry out representations of violence, sexually explicit or pornographic contents or discriminating statements or representations with respect to race, sex, religion, nationality, handicaps, sexual orientation or age on the

Publisher's website and/or in connection with participation in affiliate programmes,

- not to impair the reputation or appraisal of the goods or service, the brand or the business activities of the Advertiser – also through placement of the hyperlink.

12.3. If the Publishers of affilinet do not meet these obligations towards the Advertiser, the Advertiser shall be entitled and required to assert all claims resulting therefrom, namely, in particular, rights to information, rights to a forbearance and compensation claims against the Publisher, unless this is recognisably futile due to the Publisher's lack of funds.

12.4 The Advertiser shall undertake not to enter into any direct contractual relationships with the Publisher or indirect relationships through third parties for the purpose of rendering services by the Publisher in support of the Advertiser by advertising its website and the goods and services offered there by the suppliers, during the entire term of this contract, and for a further period of two years after termination of this contract if

- the Publisher has taken part in the Advertiser's partner programme and
- this Publisher has been one of the 20 top-selling Publishers in the Advertiser's partner programme according to the Publisher's net remuneration in the preceding 12-month period or – if the programme has been in effect for only a very short period of time or the Publisher has only taken part in the partner programme for a short period of time – during the total period.

This does not apply to such Publishers with whom the Advertiser had already demonstrably concluded corresponding contracts prior to the Advertiser's registration on affilinet's platform. The Advertiser shall undertake to pay a contractual penalty for each case of violation of this obligation to affilinet at the reasonable discretion of affilinet, whose sum shall be checked by the competent court.

13. Liability restrictions and compensation

13.1. Defects and malfunctions shall be reported to affilinet in writing or by e-mail without delay, but at the latest within two weeks after they become known.

13.2. affilinet shall be liable in the event of the breach of an essential contractual obligation (cardinal obligation) in a manner that places the contractual purpose at risk. affilinet shall otherwise only be liable if it is guilty of intent or gross negligence.

13.3. In the event of the breach of an essential contractual obligation (cardinal obligation) caused by slight negligence, liability shall be limited to the typical foreseeable damage. The liability of affilinet is restricted in this case to a sum of a maximum of € 5,000.00 per claim.

13.4. affilinet shall not be liable to businessmen/businesswomen for the gross negligence of simple vicarious agents if they have not breached any essential contractual

obligation (cardinal obligation) in a manner that places the contractual purpose at risk. ^

- 13.5. Notwithstanding sections 13.2. to 13.4., the liability remains in effect for claims arising from the Product Liability Law and the producer's liability, or if the liability relates to damage arising from the loss of life, personal injury or illness.
- 13.6. If the liability of affilinet is excluded or restricted according to sections 13.2 and 13.3, this also applies to the representatives, executive employees or vicarious agents of affilinet.

14. Proviso to make unilateral changes

- 14.1. If affilinet intends to amend the General Terms and Conditions of Business, affilinet shall inform the Advertiser thereof. If the Advertiser does not object in due form or on time, the amended terms and conditions of business shall enter into force 2 calendar weeks after receipt of the notification from the start of the new calendar week. The objection is then only in due form or on time if the objection is made in writing and is received by affilinet within one week after receipt of the notification. affilinet shall inform the Advertiser of the possibility of filing an objection, its form and time period and the legal consequences of not filing an objection in due form and on time.
- 14.2. The remuneration in the case of all affiliate programmes shall be subject to change with regard to the Publisher's share of the remuneration. In the case of all affiliate programmes, the Advertiser for affilinet may amend this remuneration share at its discretion with effect with respect to the Publisher. The amendment shall take place by notifying the amended remuneration on the platform of the respective affiliate programme. The amendment shall become effective after publication on the platform on the following day at midnight. This does not apply if a minimum remuneration has been agreed for the Publisher for the programme.

15. Place of jurisdiction, applicable law and separability clause

- 15.1. If the Advertiser is a businessman/businesswoman, Munich (Munich I Regional Court) shall be agreed as the place of jurisdiction for all disputes arising from this contract, including legal actions based on a bill of exchange or a cheque. Each party shall also be entitled to institute legal proceedings against the other party at its general place of jurisdiction.
- 15.2. German law shall apply, to the exclusion of the standard UN Sales Convention (CISG).
- 15.3. Should one or several of the provisions be or become invalid, this shall not affect the validity of the remainder of the provisions. The invalid provisions shall be replaced by an appropriate provision that comes closest to what the contracting parties had intended.

Status as of June 2007