

# **Terms and Conditions for Advertisers**

# General Terms and Conditions of Business for Advertisers

*Last updated February 2018*

## Content

Introduction	1
1. Definitions of terms used in these General Terms and Conditions of Business	1
2. Entry into Agreement	2
3. Subject matter of agreement	3
4. Right to determine services; scope and performance of services	4
5. Prerequisites for compensation; provisional credit	5
6. Payment method; compensation	7
7. Obligations of the Advertiser	8
8. Access and term of agreement	9
9. Deactivation of the Account; termination of the agreement	10
10. Legal relationship with the Publishers of affilinet	10
11. Limitations of liability and indemnification in the event of breach of contract	12
12. Confidentiality	13
13. Reservation of right to make changes	13
14. Scope of application	14
15. Place of jurisdiction; choice of laws; severability	14

## Introduction

affilinet GmbH (hereinafter “affilinet”) operates, under the domain affili.net, a platform (hereinafter also “affilinet Network”) that allows providers of online goods and services who are registered with affilinet (hereinafter “Advertisers”) to advertise products within the scope of programs. To this end, persons and entities registered with affilinet (hereinafter “Publishers”) provide their advertising settings – such as a website – to the Advertisers or affilinet itself.

The subject matter of the programs is the performance of media services via the Publisher’s advertising settings by means of advertising materials – such as banners or text links – to support the Advertiser in selling goods and services online.

## 1. Definitions of terms used in these General Terms and Conditions of Business

For the purposes of these General Terms and Conditions of Business (hereinafter “Terms & Conditions”) and all contracts and agreements with the Advertiser, the following terms have the meanings set forth below:

**Account** means access to the affilinet platform as enabled after successful registration and authorization by affilinet.

**View:** A “View” is an instance of access, executed by the user, to the Publisher’s advertising setting, through which an advertising material of the Advertiser is shown according to the program terms and conditions. After the advertising setting is accessed and after a lead or sale has been generated thereupon, even without a click on the Advertiser’s advertising material, the Advertiser may be under an obligation to pay compensation (post-view).

**Click:** A “Click” is an instance of access, voluntarily and deliberately executed by the user, to a hyperlink for the Advertiser’s program, leading to access to the website of the Advertiser that is linked to. The hyperlink must be embedded in the advertising setting (such as the website) of the Publisher as authorized according to the program terms and conditions. Later continuation of the user’s action (e.g. in the case of a lead or sale) can also lead to an obligation on the Advertiser’s part to pay compensation (post-click).

**Call:** A “Call” is an instance of access, voluntarily and deliberately executed by the user, to a phone number allocated to the Advertiser’s program and displayed in the Publisher’s advertising setting.

**Lead:** In the case of a “Lead,” a valid View, Click, or Call is followed by an instance of voluntary and deliberate execution of a specific defined action on the Advertiser’s website (a qualified action) by the user. Leads are logged by the affilinet system, verified by the Advertiser, and determined and confirmed by affilinet in its equitable discretion.

**Sale:** In the case of a “Sale,” a valid View, Click, or Call is followed by a voluntary and deliberate purchase of goods for which compensation is owed, or by an instance of voluntary and deliberate use of a service for which compensation is owed, by the user. Sales are logged by the affilinet system, verified by the Advertiser, and determined and confirmed by affilinet in its equitable discretion.

**Hyperlink** means a reference to the Advertiser’s website, provided by the Advertiser via the platform for use by the Publisher in the Publisher’s advertising setting for the Advertiser’s program.

**Pay-Per-View/Click/Call/Lead/Sale program:** The claim to compensation within the scope of a Pay-Per-View/Click/Call/Lead/Sale program depends on prerequisites specified in these Terms & Conditions.

**User** means any natural person or legal entity that accesses the Publisher's advertising setting or the Advertiser's website, as the case may be, and performs a View, Click, Call, Lead and/or Sale.

**Advertising Setting (Publisher's):** The "Advertising Setting" is the Internet offering of the Publisher or of a third party that obtains the rights of use of a Publisher's Internet offerings, such as websites, mobile sites, social profiles, apps, etc., and which is the subject matter of the agreement. In the program terms and conditions, the Advertiser may, however, also expand the Advertising Setting (e.g. to include search engine marketing). If the Advertising Setting is a website, this is to be understood as encompassing the Publisher's Internet offering, under the domains stated and registered by the Publisher, with the content reviewed by the Advertiser. It may be possible for the Advertiser to see the domains stated in the Publisher's Account. The Advertiser will review these and/or the content thereof proactively at reasonable intervals and, if appropriate, report them to affilinet.

**Website (Advertiser's)** is the Internet offering of the Advertiser (such as websites, mobile sites, social profiles, apps, etc.) that is the subject matter of the agreement, under the exactly stated URL under which the Advertiser sells or advertises goods and/or services online and to which the Hyperlink to be used by the Publisher in accordance with the rules of the program refers.

## 2. Entry into Agreement

- 2.1 Upon registration, the Advertiser will receive the opportunity to participate in the affilinet Network. affilinet will offer the Advertiser a portfolio of Publishers that, for their part, provide their Advertising Settings to the Advertiser.
- 2.2 An Account can only be opened by legal entities or by natural persons with unlimited legal capacity within the meaning of section 14 of the German Civil Code (BGB). There is no claim to participation.
- 2.3 affilinet or a third party commissioned by affilinet is entitled to demand that the Advertiser present appropriate proof of its identity, such as valid business documentation, an extract from the Commercial Register, and/or proof of identity.
- 2.4 If an employee of a legal entity registers such entity as an Advertiser, the employee is required to have written authorization from the legal entity to take such action. The same applies if another third party (such as an agency) opens an Account on behalf of an Advertiser. Proof of authorization must be provided to affilinet upon request.
- 2.5 The Advertiser is obligated to provide affilinet as well as the Publisher with complete, factually correct information with regard to all registration information requested by affilinet as well as all information requested by affilinet with regard to the programs offered. The Advertiser is obligated to keep the registration information and all information regarding its programs up to date at all times.
- 2.6 Upon complete registration, activation of the Advertiser Account, acceptance of the set-up fee and acceptance of these Terms & Conditions, the Advertiser is deemed to have made an offer to enter into an agreement regarding participation in the affilinet Network with the content set forth in these Terms & Conditions.
- 2.7 If affilinet accepts such offer, the Advertiser will receive a confirmation e-mail. Upon acceptance of the order confirmation, the agreement (a "framework agreement") is considered to have come into being force between the Advertiser and affilinet. affilinet reserves the right to refuse to accept the offer without stating any reasons therefor. In such a case, no set-up fee will apply.

### 3. Subject matter of agreement

- 3.1 The Advertiser maintains an online offering to sell its goods and services and requires Advertising Settings to promote these sales. Within the scope of programs between Advertisers and Publishers, Publishers provide these Advertising Settings to the Advertiser. Either the Advertisers or the Publishers apply to participate in the programs via the affilinet Network. affilinet offers the Advertiser applications from Publishers to participate in its programs. affilinet offers the Publisher programs offered by Advertisers for which the Publisher can provide its Advertising Settings in order to support sales of the Advertiser's goods and services.
- 3.2 By applying for a program, the Publisher accepts any additional program-specific terms and conditions of participation of affilinet or the Advertiser as mentioned on the platform. The Advertiser guarantees that such additional terms and conditions of participation do not conflict with these Terms & Conditions, the affilinet General Terms and Conditions of Business for Publishers, or other applicable provisions in force. In the event of any conflict between provisions of these Terms & Conditions and the affilinet General Terms and Conditions of Business for Publishers and the Advertiser's additional terms and conditions of participation, the provisions of these Terms & Conditions and the affilinet General Terms and Conditions of Business for Publishers shall take precedence over the Advertiser's terms and conditions of participation.
- 3.3 Acceptance of an application or offer to participate in a program takes place through the Advertiser or Publisher, which brings an individual contract under this framework agreement into being. The individual contract and the additional terms and conditions of participation, if any, shall become a component of the framework agreement between affilinet and the Advertiser. No contractual relations whatsoever are created between the Advertiser and the Publisher. The individual contract contains the concrete details as to the nature of, and the compensation for, the service to be provided to support the relevant Advertiser in its online sales of its goods and services, such as purchasing goods or utilizing services through a third party ("Sale") or ordering a newsletter ("Lead"). A combination of Call, Click, Lead, Sale, and View is possible. Both the Advertiser and the Publisher as well as affilinet are entitled to deny an application without stating any reasons therefor.
- 3.4 The Advertiser agrees to review the offer from the applying Publisher to participate in the program within a review period of two (2) weeks, calculated as from the issuance of the offer, and to either reject or accept it. The decision to accept a Publisher for a program of the Advertiser shall be made exclusively by the Advertiser during the review period. After the review period has elapsed, affilinet is permitted to accept or reject the application for the Advertiser without stating any reasons therefor. If there is no authorization from affilinet, an application is considered to have been rejected without further ado.

- 3.5 If affilinet works as an aggregator for a plurality of programs, the foregoing provisions apply accordingly, subject to the proviso that the right to accept the offer is reserved for affilinet. affilinet is permitted to enable Publishers – e.g. within the scope of comparison tables or product data – to enter into a partnership and receive access to a large number of Advertisers that offer services on an aggregated basis in the relevant category. In this case, affilinet shall act as an aggregator and shall apply for the Advertiser’s program with effect for all participating Publishers. Within this scope, affilinet assumes responsibility solely for submitting an application to the Advertiser and for acting as an aggregator for the Publishers. In this regard, the provisions set forth in sections 3.1 through 3.4 of these Terms & Conditions apply accordingly, but with effect for the affected Publishers only. The participating Publishers, for their part, are obligated to the Advertiser in this case as well, particularly with regard to compliance with the standard terms and conditions for participation in the (aggregated) program and the affilinet General Terms and Conditions of Business for Publishers.
- 3.6 Upon acceptance of the offer, affilinet becomes entitled, but not obligated, to perform services to support the relevant Advertiser through its Publishers. The Advertiser has no claim on affilinet to the performance of services by affilinet or by affilinet’s Publishers. However, if and insofar as affilinet performs services pursuant to these Terms & Conditions through its Publishers, the Advertiser is required to compensate affilinet therefor.

#### **4. Right to determine services; scope and performance of services**

- 4.1 affilinet is entitled, but not obligated, to further develop the platform on an ongoing basis at its own discretion and to adjust it according to technical developments.
- 4.2 Media services to support the Advertiser during online sales of goods and services shall be performed exclusively by the Publishers. The Publisher shall become active with regard to the nature, scope, and design of the advertising for the Advertiser’s program in the interests of the Advertiser, and not in fulfillment of any obligation of affilinet vis-à-vis the Advertiser. The Advertiser reserves the right to set out further detail of the scope of the Publisher’s duties, beyond the obligations contained in section 10 hereof, through the separate terms and conditions of participation in the program and to establish supplementary obligations of the Publisher vis-à-vis the Advertiser. In this regard, Publishers shall not become active as agents in the performance of affilinet’s contractual obligations (its Erfüllungsgehilfen).
- 4.3 affilinet is also entitled to assign responsibility for performing its own services or portions thereof to third-party service providers or agents in the performance of affilinet’s contractual obligations (its Erfüllungsgehilfen) for such parties to perform independently.

## 5. Prerequisites for compensation; provisional credit

- 5.1 For setting up a program, affilinet will charge the Advertiser a one-time set-up fee, the amount whereof shall be agreed separately, which shall fall due for payment upon entry into the agreement.
- 5.2 affilinet shall enable the Advertiser to operate Pay-Per-Click/View/Call/Lead/Sale programs or a combination of the aforementioned types of programs. The compensation indicated for the program at the start thereof shall be standard compensation that the Advertiser can increase at any time, but cannot be reduced without the prior written approval of affilinet during an initial minimum term of three (3) months. In addition, the Advertiser agrees that it will notify affilinet and the Publisher of any and all rate changes in writing five (5) business days before the changes take effect. A claim to compensation shall arise in accordance with the terms and conditions of the relevant program in the case of valid generation of Clicks, Views, Calls, Leads, or Sales as defined in these Terms & Conditions. affilinet's net compensation shall be determined based on the Publisher's net share of compensation in accordance with the compensation indicated in the relevant program. There is also an additional charge in the amount of 30%.
- 5.3 In the case of Pay-Per-View programs, affilinet will be credited for the then-applicable fixed amount pursuant to the program plus the additional charge agreed pursuant to section 5.2 of these Terms & Conditions or shall charge the relevant amount to the Advertiser's Account with affilinet unless the matter solely concerns Views for so-called "Post-View Tracking." Charges are assessed per thousand (1,000) Views.
- 5.4 In the case of Pay-Per-Click and Pay-Per-Call programs, affilinet will be credited, for each Click or Call, as the case may be, the then-applicable fixed amount pursuant to the program plus the additional charge agreed pursuant to section 5.2 of these Terms & Conditions and the relevant amount will be charged to the Advertiser's Account with affilinet.
- 5.5 Clicks that are not generated via Hyperlink and/or to the Advertiser's Website are not valid. Clicks, Views, and Calls automatically generated through technical equipment (such as click generators) and those initiated through force or deceit are not valid. Repeated Clicks, Views, and Calls by the same User – also including Clicks on various Hyperlinks – and those made in succession by the same User within a short period are also not valid. Clicks, Views, and Calls for which the User receives compensation from the Publisher are likewise not valid. Clicks that are associated with a required action, such as sending a text message, participation in a sweepstake, or use of the Click in a paid e-mail system, are impermissible as a basic principle except with the prior written approval of affilinet or except as permitted pursuant to the program terms and conditions. In the absence of such approval or explicit permission, Clicks, Views, and Calls generated through these means are not valid.
- 5.6 All Clicks, Views, and Calls considered to be valid at the time shall be deducted from the Advertiser's Account with affilinet in the course of the daily analysis of the transaction system. The charges on the Advertiser's Account do not initially constitute any acknowledgement that the Clicks, Views, and Calls recorded do in fact represent the entirety of the valid Clicks, Views, and Calls recorded. In this regard, affilinet reserves the right to review the validity and settlement of accounts for further Clicks, Views, and Calls pursuant to the provisions of these Terms & Conditions and the terms and conditions of participation in the relevant program.

- 5.7 Credits or charges, as the case may be, in the case of Pay-Per-Lead programs, Pay-Per-Sale programs, or a combination thereof with the aforementioned program types, are initially subject to the remarks set forth under sections 5.3 through 5.6 of these Terms & Conditions, which apply accordingly. As a basic principle, Views (including post-views), Clicks (including post-clicks), and Calls can lead to a Lead and/or Sale. A Call may already constitute a Lead. affilinet is permitted to allow the granting of compensation (for example within the scope of bonus programs) to the User for the implementation of a Lead, Sale, or Call. Leads or Sales that have been logged, but not verified as valid, will be noted, but not yet charged to the Advertiser, and will initially not be considered to constitute sales. affilinet's notation thereof and/or imposition of charges on the Advertiser's Account does not constitute acknowledgement that the Leads or Sales in question are in fact valid or represent the entirety of all Leads or Sales recorded. In the case of Pay-Per-Sale programs with percentage compensation, the compensation will be calculated according to the net sales value of the goods or service (meaning exclusive of additional services and VAT).
- 5.8 The Advertiser is free to prove that the Leads or Sales logged by affilinet are not valid Leads or Sales. The Advertiser should verify the Leads or Sales noted without delay via the platform.
- 5.9 Unless otherwise agreed, affilinet will grant the Advertiser a verification period of 60 days for Leads or Sales that have been noted, after the expiration of which Leads or Sales that have been noted will automatically be considered verified, valid Leads or Sales. Nonetheless, the Advertiser remains obligated to verify valid Leads or Sales prior to the expiration of such period unless there are any legitimate objections.
- 5.10 At affilinet's request, the Advertiser will provide information on the Views, Clicks, Calls, Leads, and Sales verified and not verified by it and with regard to the Advertiser's objections in this regard. The Advertiser also grants affilinet the right to review the verifications that have been performed with regard to the completeness and accuracy of the content thereof. This proof may be provided in the form of appropriate documents, customer documentation, and/or log files. In this regard, affilinet is also entitled to have the information provided by the Advertiser reviewed by a German certified accountant and auditor (Wirtschaftsprüfer) who has undertaken an obligation to maintain confidentiality, during the customary business hours, through inspection of the relevant business documents on the Advertiser's premises. The costs of this shall be borne by affilinet in the case of discrepancies (with regard to the Views, Clicks, Calls, Leads, or Sales verified by the Advertiser in relation to the actual Views, Clicks, Calls, Leads, or Sales) of less than 2.5%, and otherwise shall be borne by the Advertiser.
- 5.11 The Advertiser agrees that it will, in all cases, agree upon the amount of the standard compensation for Views, Clicks, Calls, Leads, and Sales in the case of programs of the Advertiser with affilinet such that the amount thereof is at least equal to the maximum standard compensation for comparable programs of the Advertiser with other public and private networks. If, during the term of its cooperation with affilinet, the Advertiser agrees upon better terms and conditions with a different public or private network, such terms and conditions shall automatically apply likewise in relation to affilinet.
- 5.12 The Advertiser shall be obligated to render compensation even if the Advertiser or one of its agents, in the performance of its contractual obligations (its Erfüllungsgehilfen), causes a tracking failure or another malfunction. In such a case, the amount of compensation to be rendered shall be calculated based on the average daily sales for the previous three (3) months. The full daily sales shall fall due for payment for each portion of a day.



- 5.13 The Advertiser is obligated to notify affilinet and the Publishers of any tracking changes two (2) months before such changes take effect, and to coordinate such changes with affilinet. If the Advertiser changes the tracking process (also including the tracking hierarchy) without first notifying affilinet and coordinating the matter with affilinet, and the logging no longer functions correctly as a result (tracking failure or other malfunction), the Advertiser will subsequently provide compensation for the failure vis-à-vis the Publishers and affilinet, based on the average earnings for the three (3) months preceding the failure.

## **6. Payment method; compensation**

- 6.1 Payments of the Advertiser will be handled via an Account of the Advertiser with affilinet. Credit balances on the Advertiser's Account will not bear interest. Unless otherwise agreed, the Advertiser is required to deposit an initial credit balance with affilinet for each program at the start of the program, with the amount thereof to be agreed, but not less than EUR 1,000.00.
- 6.2 If the Advertiser's credit balance for a certain program falls below EUR 500.00 (minimum coverage limit) due to charges against the Account, affilinet is entitled to demand that the Advertiser provide a further advance payment in an amount at least equal to the originally agreed initial credit balance. affilinet is, at its own option, also entitled to demand that the Advertiser remit a higher advance payment in exchange for an invoice and to claim a higher minimum coverage limit. The amount of the advance payment, i.e. the amount of the higher advance payment demanded by affilinet and/or the amount of the minimum coverage limit, will be determined by affilinet in its equitable discretion, i.e. on the basis of the sales previously achieved in the program or to be expected based on affilinet's experience, including the compensation for affilinet.
- 6.3 If the Advertiser's credit balance is insufficient to cover the sales that have been noted (see section 5.7 of these Terms & Conditions above), affilinet is entitled, but not obligated, to demand a further deposit from the Advertiser, up to the amount of the sales that have been noted, but not less than the agreed initial credit balance. By way of analogous application of the provisions of section 6.2 above, affilinet is entitled to charge the Advertiser a higher advance payment in this case as well.
- 6.4 Invoices from affilinet may be submitted in electronic form and are due and payable immediately after receipt of the invoice. The Advertiser is not entitled to deduct any prompt or cash payment discounts (Skonti). In the event of delay or default in payment, affilinet reserves the right to charge both dunning fees and default interest and to halt the relevant programs.
- 6.5 If the Advertiser is a business entity (Unternehmer) or a public-law legal entity (juristische Person des öffentlichen Rechts), the Advertiser is not entitled to offset claims of its own against claims of affilinet, or to withhold or reduce payment, even if counterclaims or complaints concerning defects are asserted, except if the counterclaims in question are undisputed or have been established with final, binding legal force. The Advertiser is, however, entitled to withhold payment with regard to counterclaims arising out of the same contractual relationship as well.

## 7. Obligations of the Advertiser

- 7.1 The Advertiser will endeavor, within the scope of the technical options available to it, to ensure that its Website (including all entries in search engines, directories, or third-party lists of links) is designed and presented such that Users generate valid Views, Clicks, Calls, Leads, or Sales to or on the Advertiser's Website, as the case may be, and that these can be logged in full using appropriate tracking methods. The logging thereof must be ensured both with and without cookies. In addition, the Advertiser agrees to incorporate the affilinet tracking codes correctly and in full so the tracking functions properly.
- 7.2 The Advertiser agrees to disclose its tracking methods, particularly the function of the tracking filters and attribution methods used, to affilinet in writing within five (5) business days after entry into the agreement.  
If the changes are performed with regard to a running program, affilinet must be informed thereof and of the exact changes two (2) months before they take effect. This notice must be made in writing. affilinet is also authorized to publish this information on its portal. In the event that the Advertiser additionally uses its own tracking, the affilinet tracking shall always be valid for the relevant individual contracts. If and insofar as the Advertiser implements tracking filters, the Advertiser guarantees that affilinet's tracking will not be affected thereby.
- 7.3 The Advertiser shall provide the Hyperlinks and advertising materials necessary for participation in a program to affilinet or affilinet's Publishers, as the case may be, for access on demand. The Advertiser shall provide affilinet with Hyperlinks and advertising materials that affilinet is permitted to use in the Publisher's Advertising Setting. The Hyperlinks and advertising materials must be appropriate for use as intended by the Publisher. affilinet is entitled to use the Advertiser's advertising materials and name, and the brand names of the goods or services advertised via affilinet, as references within the scope of its own business acquisition activities.
- 7.4 If and insofar as a website and/or application optimized for mobile devices exist(s), the Advertiser agrees to equip such website and/or application with the affilinet tracking technology for functional tracking purposes.
- 7.5 The Advertiser agrees to design its Website and advertising materials such that third-party rights, including copyright, are not infringed. Furthermore, the Advertiser agrees not to violate applicable laws, particularly also including data protection and privacy laws. The Advertiser is not permitted to use personal information to which it becomes privy or confidential information, including such information of the Publishers of affilinet, except for the purposes of handling the agreement and for the term thereof.
- 7.6 The Advertiser is obligated to equip its business offer with a notice identifying the provider (section 5 of the German Tele-Media Act (TMG)). The Advertiser is obligated to design its Website in accordance with legal provisions for the protection of consumers.
- 7.7 Depictions of violence, unambiguously sexual or pornographic content, or discriminatory statements or depictions with regard to race, gender, religion, nationality, handicap, sexual orientation, or age, are not permitted on the Advertiser's Website and/or in connection with participation in programs of affilinet. The design of the Website must not lend itself to adversely affecting the reputation or good image of the goods or services, the brand, or the business operations of affilinet. The Advertiser agrees to cooperate in any and all ways that may be required in the event that it is necessary to provide information to government agencies.

- 7.8 affilinet is permitted to have the Hyperlink and/or the associated advertising materials for the Advertiser's Website placed in any number desired, at any location desired, in the Advertising Setting of the Publisher or the platform. The Advertiser is, however, permitted to demand that the placement of the Hyperlink and/or the advertising material be changed if it or they adversely affect(s) the reputation or good image of the goods or services, the brand, or the business operations of the Advertiser.
- 7.9 If and insofar as the Advertiser agrees to provide affilinet with its product information for the purpose of application by the Publishers, the Advertiser agrees to provide the product information to affilinet in an appropriate form (for the purposes of this provision, "in an appropriate form" means that affilinet can download the product information file). The Advertiser also warrants that all required fields will be contained and completed in full and that the provisions of European law on the subject of product information and product advertising will be complied with. The update cycle will be agreed in writing between affilinet and the Advertiser.
- 7.10 The Advertiser is obligated to monitor the advertising activity of the Publishers and, where applicable, their sub-publishers, particularly the information provided by the Publishers with the scope of their applications for the programs and the advertising space provided as well as the setting thereof.
- 7.11 For testing the implementation of affilinet's tracking pixel the Advertiser is obliged to provide affilinet with a test account for its shop before starting the respective program.
- 7.12 affilinet is entitled to temporarily suspend or halt a program if the Advertiser fails to comply with its obligations, such as the obligations in the case of tracking and filter changes. In the former case, the relevant program will then only be visible and executable for Publishers existing within the scope of the program in question, and in the latter case, even existing Publishers will no longer be able to apply for the program.
- 7.13 The Advertiser agrees to pay to affilinet for each case of non-compliance with provisions of this framework agreement, particularly those set forth under section 7 of these Terms & Conditions, a contractual penalty whose amount is at the equitable discretion of affilinet and is oriented to the circumstances of the specific individual case and, in the event of a dispute, shall be reviewed by the court with jurisdiction over the matter.
- 7.14 The obligations of the Advertiser as stipulated in section 7 of these Terms & Conditions are assumed by the Advertiser, including with effect for the benefit of the relevant Publishers of affilinet (termed a "contract for the benefit of third parties").

## **8. Access and term of agreement**

- 8.1 The Account is initially issued to the Advertiser indefinitely.
- 8.2 The framework agreement between affilinet and the Advertiser regarding the performance of services to support the relevant Advertiser in its online sales of goods and services is entered into for an indefinite term.

## 9. Deactivation of the Account; termination of the agreement

- 9.1 The Parties are entitled to terminate all agreements by way of ordinary termination upon three (3) months' notice, effective as of the end of the quarter.
- 9.2 The right to extraordinary termination for good cause remains reserved for the Parties. The Parties are deemed to have good cause therefor in particular if essential contractual obligations, especially the obligations of the Advertiser pursuant to section 7 of these Terms & Conditions, are violated.
- 9.3 Termination pursuant to these provisions is not valid unless given in writing. Notice of deactivation of access is possible at any time, with no particular requirements as to form.
- 9.4 In the event of termination of the agreement, access to the affilinet Network will be deactivated. affilinet is moreover entitled to deactivate the Advertiser's Account and notify the Advertiser thereof, particularly if
  - 9.4.1 the Advertiser has not operated any program during a period of three (3) months. Operation of a program is, in particular, defined as installation of the affilinet tracking technology and/or the communication of Sales or Leads, as well as the general fulfillment of the obligations specified under sections 3, 5, and 7 of these Terms & Conditions.
  - 9.4.2 the initial credit balance for the program (see section 6.1 of these Terms & Conditions, above) has not been used up within a period of six (6) months.
- 9.5 In the event of deactivation of access, accounts will be settled with regard to any credit balance that may exist. In such a case, accounts can be settled, irrespective of the abovementioned payment methods, based on a payment method to be agreed upon separately in writing by the Parties.

## 10. Legal relationship with the Publishers of affilinet

- 10.1 The contracts regarding the performance of services to support the Advertiser during online sales of goods and services shall come into existence exclusively between affilinet and the Advertiser, in accordance with section 3 of these Terms & Conditions.
- 10.2 The Publishers of affilinet have undertaken the following obligations vis-à-vis affilinet, including with effect for the Advertiser's benefit:
  - to design and present their Advertising Setting, including all entries in search engines, directories, or third-party lists of links, such that valid Views, Clicks, Leads, or Sales on the Advertiser's Website are generated exclusively by Users;
  - not to modify the HTML code provided by the Advertiser or banners that have been provided, and to use the advertising materials provided only in the Publisher's Advertising Setting;
  - to use the advertising materials only in connection with participation in a program, and not to disclose information or advertising materials to third parties;
  - to use names, protected brand names and trademarks, the company name or logos of a third party – particularly the Advertiser – only if the Publisher has the consent of the rights holder;
  - to design their Advertising Setting in such a way that third-party rights, including copyright, are not infringed and applicable laws, particularly including data protection and privacy laws, are not violated;

- to send e-mails with advertising for affilinet and/or the programs only in compliance with the statutory provisions (especially section 7 (1) – (3) of the German Act Against Unfair Competition (UWG)) and current case law (such as the decision of the German Federal Court of Justice (BGH) dated February 10, 2011, reference No. I ZR 164/09);
- to design their Advertising Setting in compliance with statutory provisions on protection for consumers;
- not to engage in any depictions of violence, unambiguously sexual or pornographic content, or discriminatory statements or depictions with regard to race, gender, religion, nationality, handicap, sexual orientation, or age, within the Publisher's Advertising Setting and/or in connection with participation in programs;
- not to adversely affect the reputation or good image of the goods or services, the brand, or the business operations of the Advertiser, including through the placement of the Hyperlinks.

10.3 If and insofar as Publishers of affilinet fail to comply with these obligations vis-à-vis the Advertiser, the Advertiser is entitled and urged to assert all claims arising therefrom, namely especially claims to provision of information, cease-and-desist claims, and claims for damages, vis-à-vis the Publisher, unless so doing obviously has no prospects of success due to a lack of assets on the Publisher's part. The Advertiser is also permitted to issue five (5) business days' notice of ordinary termination, effective as of the end of a calendar week, vis-à-vis the Publisher on affilinet's behalf.

10.4 The Advertiser agrees that during the entire term of this Agreement and for a period of an additional two (2) years after the termination hereof, it will not enter into contractual or other business relationships with Publishers, either directly or indirectly, including via third parties, with the purpose of provision of services to support the Advertiser in advertising its Website, and the goods and services offered there by the providers, by the Publisher, if

- the Publisher has participated in the Advertiser's program, and
- this Publisher is, during the preceding 12-month period or – if the program was operated for a shorter period or the Publisher participated in the program for only a shorter period – during the entire period, among the top 20 Publishers in the Advertiser's program that generate the strongest sales according to the Publisher's net compensation.

This does not apply to those Publishers with which the Advertiser had demonstrably entered into corresponding agreements even before the Advertiser registered for the affilinet platform. The Advertiser agrees that in each case of non-compliance with this obligation, it will pay to affilinet a contractual penalty at affilinet's equitable discretion, the amount of which must be subject to review by the court with jurisdiction in the matter.

## **11. Limitations of liability and indemnification in the event of breach of contract**

- 11.1 affilinet must be notified of any defects and/or disruptions without delay, at the latest within two (2) weeks after they come to light, either in writing or via e-mail.
- 11.2 affilinet is liable in cases of culpable violation of an essential contractual obligation (a “cardinal” obligation) in a manner that jeopardizes the purpose of the agreement. In all other cases, affilinet is liable only if and insofar as affilinet can be held responsible for intent or gross negligence.
- 11.3 In the event of a violation of an essential contractual obligation (a “cardinal” obligation) caused through ordinary negligence, liability is limited to the typically foreseeable damage or loss. In this case, affilinet’s liability is limited to the maximum amount of € 5,000.00 per event of damage or loss.
- 11.4 In all other cases, and without influencing liability pursuant to sections 11.2 and 11.3 of these Terms & Conditions, affilinet’s liability is limited to the maximum amount of € 5,000.00 per event of damage or loss.
- 11.5 affilinet is not liable vis-à-vis business entities (those defined as Kaufmann under German law) for gross fault on the part of ordinary agents in the performance of its contractual obligations (its Erfüllungsgehilfen) if the latter have not violated an essential contractual obligation (a “cardinal” obligation) in a manner that jeopardizes the purpose of the agreement.
- 11.6 Nothing in sections 11.2 through 11.5 of these Terms & Conditions shall affect liability for claims arising out of the German Product Liability Act (Produkthaftungsgesetz) if and insofar as affilinet has expressly issued a guarantee or if and insofar as the liability refers to damage or losses due to loss of life, bodily injury, or impairment of health.
- 11.7 If and insofar as affilinet’s liability is precluded or limited pursuant to sections 11.2 through 11.5 of these Terms & Conditions, this also applies to affilinet’s representatives, managerial staff, or agents in the performance of its contractual obligations (its Erfüllungsgehilfen).
- 11.8 The Advertiser shall indemnify and hold harmless affilinet and its partners (Publishers) against any and all claims for damages, liability claims, warning notices, cease-and-desist declarations by third parties, and other claims, as well as any and all costs, efforts and expenditures associated therewith as arising from behavior (including omissions) by the Advertiser as the root cause thereof. This applies in particular in cases of infringement of copyright, trademark rights, competition rights and data protection and privacy rights or rights of third parties.

## 12. Confidentiality

- 12.1 The Parties agree that each of them will treat all operational and other business-related information and findings of the other Party made accessible to it in connection with this agreement that are designated as confidential or are, according to other circumstances, recognizable as business or trade secrets of one Party, as confidential for an indefinite term beyond the termination of the agreement, and not to record or disclose these items, or use them for any other purpose, except as necessary to achieve the purpose of the agreement.
- 12.2 The Parties shall ensure, by entering into appropriate contractual agreements with the employees and agents acting on their behalf, that these parties also refrain, for an indefinite term, from engaging in any use of their own or unauthorized recording of such confidential information as well as business and trade secrets. Each Party is obligated to consult the other Party if any doubts whatsoever should arise as to whether or not specific information requires confidential treatment in the specific individual case. If there is any doubt, information must be treated as confidential.

## 13. Reservation of right to make changes

- 13.1 If affilinet intends to amend its General Terms and Conditions of Business, affilinet will notify the Advertiser thereof. If the Advertiser does not object thereto in due form or in due time, the amended Terms and Conditions of Business shall take effect two (2) calendar weeks after receipt of the notice, upon the commencement of a new calendar week. An objection is only deemed to have been made in due form and in due time if it is made in writing and is received by affilinet within two weeks after receipt of the notice. affilinet shall notify the Advertiser of the possibility of filing an objection and of the form and time limit therefor and the legal consequences of failing to file an objection in due form and in due time.
- 13.2 Compensation for all programs is subject to change at any time with regard to the Publisher's share of compensation. In the case of all programs, the Advertiser is permitted to change this share of compensation with effect vis-à-vis the Publisher for affilinet in its equitable discretion, i.e. particularly including taking into account the interests of affilinet and in compliance with the provisions of section 5.2 of these Terms & Conditions. The change shall take place by way of communicating the changed compensation on the platform for the relevant program. The change shall take effect after publication on the platform, as of 12:01 a.m. on the following day. This does not apply if minimum compensation of the Publisher is agreed for the program.

## **14. Scope of application**

- 14.1 All deliveries, services, offers, and contracts between affilinet and the Advertiser are based at all times on these Terms & Conditions. Terms and conditions of business of the Advertiser that conflict herewith are therefore invalid unless the application thereof has been expressly agreed in written form between affilinet and the Advertiser. Any confirmations to the contrary by the Advertiser, making reference to the latter's terms and conditions of business, are hereby rejected.
- 14.2 Unless otherwise agreed between affilinet and the Advertiser, side agreements, amendments, or addenda are not valid unless set forth in written form. Any waiver of this written form requirement is also not valid unless set forth in written form.
- 14.3 Employees of affilinet are not authorized to agree to any amendments to these Terms and Conditions of Business.

## **15. Place of jurisdiction; choice of laws; severability**

- 15.1 If the Advertiser is a business entity (defined as Kaufmann under German law), the Parties agree that the place of jurisdiction for all disputes arising out of this framework agreement and all individual contracts, including complaints regarding bills of exchange and checks, is Munich (Landgericht (Regional Court) of Munich I).
- 15.2 German law applies, to the exclusion of the uniform United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 15.3 Should individual or multiple provisions of these Terms & Conditions be or become invalid, the validity of the remaining provisions shall be unaffected by such circumstance. The invalid provision(s) shall be replaced with an appropriate provision that most closely approximates the Parties' original intent.