

# **Terms and Conditions for Publishers**

# General Terms and Conditions of Business of affilinet GmbH for Publishers

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## Contents

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	2
4. Right to determine services; performance of services	4
5. Prerequisites for compensation; provisional credit	5
6. Payment method; compensation	6
7. Obligations of the Publisher	7
8. Access and term of agreement	8
9. Deactivation of the Account; termination of the agreement	9
10. Liability and indemnification in the event of breach of contract	10
11. Data protection and privacy	10
12. Confidentiality	11
13. Reservation of right to make changes	11
14. Scope of application	12
15. Place of jurisdiction; choice of laws; severability	12

## 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 Publisher, 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 Publisher will receive the opportunity to participate in the affilinet Network. The Publisher can apply for programs of the Advertisers in order to be able to display their advertising materials in its Advertising Setting.
- 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 Publisher 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 a Publisher, 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 a Publisher. Proof of authorization must be provided to affilinet upon request.
- 2.5. Upon full registration, acceptance of these Publisher Terms & Conditions, and activation of the Publisher Account by affilinet, the agreement (hereinafter also "Framework Agreement") is considered to have come into being with the content of these Terms & Conditions. affilinet does, however, reserve the right to refuse to accept the offer to enter into the agreement without stating any reasons therefor. In such a case, no agreement will come into being. The Publisher is not entitled to provide different personal information when registering different Accounts.
- 2.6. If the Publisher is an operator of a network with sub-publishers, it guarantees, by registering, that it will communicate these Terms & Conditions to its sub-publishers and enforce and monitor compliance herewith. The Publisher is liable for the behavior of its sub-publishers and shall indemnify and hold harmless affilinet from all claims resulting therefrom.

## 3. Subject matter of agreement

- 3.1 The Publisher shall receive under its Account, via the platform, access to an overview of the then-active programs of the Advertisers in which the Publisher is permitted to participate. The Publisher can apply for the available programs, indicating the Advertising Settings the Publisher operates, via the affilinet platform. Alternatively, the Advertiser can apply to initiate

a cooperative relationship with the Publisher, which can offer its Advertising Setting to the Advertiser within the scope of a program.

- 3.2 By applying to participate in a program, the Publisher accepts any additional program-specific terms and conditions of participation of affilinet or the Advertiser as mentioned on the platform. Acknowledgement of additional terms and conditions of participation of the Advertiser does not establish any contractual relationship between the Advertiser and the Publisher. In the event of any conflict between provisions of these Terms & Conditions and the affilinet General Terms and Conditions of Business for Advertisers 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 Advertisers 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 a declaration, which the Advertiser or Publisher typically issues on behalf of affilinet, to wit, in the form of acceptance of the application or offer for the relevant affiliate program and on the terms and conditions of participation that may be mentioned additionally on the platform. The program that comes into being is finally authorized by affilinet. affilinet is entitled, acting either itself or through the Advertiser or Publishers, to reject the offer from the Publisher or Advertiser for the affiliate program without stating any reasons therefor. In the absence of a declaration of acceptance, the application or offer is considered to have been rejected without further ado. The Publisher shall have no claim on affilinet or the Advertiser to participate in a program.
- Upon acceptance of the application or offer, an individual contract concerning the performance of advertising services shall come into being between affilinet and the Publisher, for the specific program applied for, on the basis of the Framework Agreement entered into in accordance with section 2.6 of these Terms & Conditions. The individual contract and the additional terms and conditions of participation, if any, shall become a component of this Framework Agreement between affilinet 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. The Advertiser and affilinet are entitled to deny an application without stating any reasons therefor. If there is no authorization from affilinet, an application is considered to have been rejected without further ado.
- 3.4 When the program is authorized, the possibility of publishing advertising materials of the Advertisers in the Publishers' Advertising Settings is created. If a third party clicks on an advertising material and takes an action described in further detail in the individual contract, the Publisher shall receive performance-based compensation from affilinet for the successful performance of the individual contract, if and insofar as the claim thereto has legitimately arisen.

3.5 If affilinet works as a program aggregator for a plurality of affiliate programs, the foregoing provisions apply accordingly. 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 a program aggregator and shall apply for the Advertiser’s affiliate 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 a program aggregator for the Publishers. In this regard, the provisions set forth in sections 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 these Terms & Conditions. Upon acceptance of the offer, the Publisher becomes entitled, but not obligated, to perform services to support the relevant Advertiser. affilinet has no claim on the Publisher to the performance of services; however, if and insofar as the Publisher performs services, they must be performed in accordance with the agreement and compensation shall be provided accordingly therefor.

#### **4. Right to determine services; 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 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.
- 4.3 affilinet is not obligated to check the advertising materials or Advertising Settings provided by the Advertisers within the scope of the partner programs for permissibility or accuracy.
- 4.4 The Publisher acknowledges that solely the Advertiser is responsible for the technologies used by the Advertiser, particularly those used during the tracking process or in compensation arrangements. The Publisher is entitled to obtain information on the technology used from the Advertiser at any time.

## 5. Prerequisites for compensation; provisional credit

- 5.1 affilinet shall enable the Publisher to participate in Pay-Per-Click/View/Call/Lead/Sale affiliate programs or a combination of the aforementioned types of programs. The Publisher shall have a claim to compensation only if these Terms & Conditions and the terms and conditions of participation in the relevant affiliate program are complied with, in the case of valid Clicks, Views, Calls, Leads, or Sales credited to the Publisher's Account, and only if the Advertiser verifies them as valid and affilinet confirms them. A Click, View, Call, Lead, or Sale is valid only if the terms and conditions of participation in the relevant affiliate program and these Terms & Conditions are fulfilled.
- 5.2 In the case of Pay-Per-View affiliate programs, the Views will be logged and verified on the basis of the affilinet transaction system, and the validity thereof shall be determined and confirmed by affilinet in its equitable discretion. Depending on the outcome of this process, a fixed amount will be credited to the Publisher for every thousand valid Views unless the matter solely concerns Views for "Post-View Tracking." affilinet shall publish the then-current/valid fixed amount on the platform when describing the affiliate program.
- 5.3 In the case of Pay-Per-Click affiliate programs, the Clicks will be logged and verified on the basis of the affilinet transaction system, and the validity thereof shall be determined and confirmed by affilinet in its equitable discretion. Depending on the outcome of this process, a fixed amount will be credited to the Publisher for each valid Click. affilinet shall publish the then-current/valid fixed amount on the platform when describing the affiliate program
- 5.4 In the case of Pay-Per-Call affiliate programs, the Calls will be logged and verified on the basis of the affilinet transaction system, and the validity thereof shall be determined and confirmed by affilinet in its equitable discretion. Depending on the outcome of this process, a fixed amount will be credited to the Publisher for each valid Call. affilinet shall publish the then-current/valid fixed amount on the platform when describing the affiliate program.
- 5.5 Clicks that are not generated via Hyperlink and/or to the Advertiser's Website, for example, are not valid. Clicks, Views, and Calls automatically generated through technical equipment (such as click generators) and Clicks, Views, and Calls that are repeated and/or made in succession within a short period by the same User – also including Clicks on various Hyperlinks – are not valid. Clicks, Views, and Calls initiated through force or deceit or 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 as permitted pursuant to the program terms and conditions. In the absence of such approval or permission, Clicks, Views, and Calls generated through these means are not valid.
- 5.6 All Clicks and Views recorded and considered to be valid pursuant to sections 5.2 through 5.5 of these Terms & Conditions shall be initially credited to the Publisher's Account with affilinet in the course of daily analysis. affilinet reserves the right to review the validity thereof pursuant to the provisions of these Terms & Conditions and the terms and conditions of participation in the relevant affiliate program, including after such items have been credited to the Publisher's Account.
- 5.7 The validity of and charges for Pay-Per-Lead affiliate programs, Pay-Per-Sale affiliate programs, or a combination thereof with the aforementioned program types are initially subject to the remarks set forth under sections 5.2 through 5.6 of these Terms & Conditions, which apply accordingly, with the deviation that the logging and verification of valid Leads and Sales in the sense of these Terms & Conditions can be performed in part through systems of the Advertisers or through the Advertisers, as the case may be. 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. Initially, all Leads or Sales will be noted on a provisional basis after the conditions of the relevant affiliate program have been met. Notation thereof on the Publisher Account does not, in particular, constitute acknowledgement that all conditions of the affiliate program have been met or that the Leads or Sales recorded are in fact valid Leads or Sales. In the case of Pay-Per-Sale affiliate programs with percentage compensation, the compensation will be calculated according to the net sales value of the goods or service (exclusive of additional services and VAT).

- 5.8 The credits noted are subject in each case to confirmation by the Advertiser, which shall verify them, and to confirmation by affilinet. Not until after the Advertiser properly verifies the Views, Clicks, Calls, Leads, or Sales as being valid and affilinet has confirmed them does the Publisher have a claim to compensation that has fallen due. This also applies if the credit is already supposed to have been disbursed to the Publisher in advance pursuant to section 6.2 of these Terms & Conditions.

## 6. Payment method; compensation

- 6.1 affilinet shall prepare for the Publisher a monthly account statement with regard to the credits for all affiliate programs implemented pursuant to section 6 of these Terms & Conditions and with regard to the relevant Account of a Publisher. The Publisher will be notified by e-mail on the first day of each month as to the amount of the expected payment for the preceding month, in accordance with the credits that have been posted on the Publisher Account maintained by affilinet up until such time. affilinet will disburse these credits to the Publisher by no later than on the 15th day of the same month provided that they amount to at least EUR 25.00 net. Otherwise, affilinet will not disburse the credits until the month in which all credits on the Publisher's Account cumulatively amount to at least EUR 25.00 net. For each disbursement, affilinet will generate a credit that corresponds to the provisions of tax legislation. The credit on the Publisher's Account will not bear interest.
- 6.2 affilinet shall endeavor to disburse credits to the Publisher as soon as possible, and therefore cannot do this without reservation. Disbursement of credits may take place without any final review by affilinet to determine whether the credits on the Publisher's Account were based on valid Views, Clicks, Calls, Leads, or Sales and, where applicable, without the Advertiser having verified them. If and insofar as any prerequisite for validity pursuant to section 5 of these Terms & Conditions is not met or the Advertiser does not grant or retracts its verification or the generation of a View, Click, Call, Lead, or Sale was based on manipulation or deceit or on a violation of the terms and conditions of the affiliate program, the standard terms and conditions of participation in the (aggregated) program, or these Terms and Conditions of Business or it is, for other reasons, not possible to determine after a review that a valid View, Click, Call, Lead, or Sale has taken place, affilinet is permitted to post reverse charges to the Publisher's Account within a time limit of twelve (12) weeks after disbursement or to demand that the amount that has been disbursed be repaid. affilinet reserves the right to demand that a payment be returned even at a later time, within the statutory limitation periods, if affilinet proves that the disbursement to the Publisher was not based on a claim to compensation established by a valid View, Click, Call, Lead, or Sale.
- 6.3 Disbursement of the credits shall initially take place for all Publishers, if and insofar as this has been agreed separately with the Advertiser, out of the Advertiser's credit balance with affilinet for coverage purposes for the relevant affiliate program. In this regard, affilinet is permitted to impose on the Advertisers an obligation to ensure adequate coverage for the credits arising with the Publishers in accordance with the credits disbursed for the preceding



month and/or the expected credits. Should the Advertiser's credit balance for coverage purposes not be sufficient to provide for the disbursement of the credits pursuant to section 6.1, affilinet will, where applicable, disburse the credits for the relevant affiliate program to all Publishers in an affiliate program on a proportional basis. Should the Advertiser fail to ensure that the Publisher's credits that are to be disbursed are covered, even after a demand to that effect from affilinet, within a time limit of two (2) weeks, the Publisher is entitled, and, before asserting claims on affilinet, obligated, to assert a claim for payment on the Advertiser for its own part. In such a case, affilinet will assign its claims vis-à-vis the Advertiser to the Publisher in the amount of the Publisher's claim, after being requested to do so. The Publisher is not obligated to assert claims on the Advertiser if so doing obviously has no prospects of success due to lack of assets.

- 6.4 The Publisher is obligated to review the credits on its Publisher Account regularly and promptly and to complain to affilinet in writing regarding any apparent defects or defects recognizable to the Publisher in accordance with standard commercial business measures without delay, but at the latest within 14 days. Any and all credits/compensation shall lapse within the statutory limitation periods.

## 7. Obligations of the Publisher

- 7.1 The Publisher is obligated to use the Hyperlinks, URLs, and advertising materials of the Advertiser exclusively as intended and lawfully and, within the scope of the technical options available within its Advertising Setting, including all entries in search engines, directories, or third-party lists of links, to design and present them such that valid Views, Clicks, Calls, Leads, or Sales for the Advertiser are generated exclusively by Users.
- 7.2 affilinet shall provide the Hyperlinks necessary to participate in an affiliate program, along with the URL of each page of the Advertiser's Website or other advertising materials, to the Publisher for access on demand. The Publisher is not permitted to modify the HTML code provided by the Advertiser for affilinet or banners, etc. that have been provided. The advertising materials provided must not be used except in the Publisher's advertising setting. Use of these advertising materials is permissible only in connection with participation in an affiliate program and within the scope of their use as intended and as approved.
- 7.3 Use of names, protected brand names and trademarks, the company name or logos of affilinet or a third party – particularly of the advertiser – is permitted only if the Publisher has the consent of the third party. The Publisher agrees to design its Advertising Setting such that third-party rights, including copyright, are not infringed. Furthermore, the Publisher agrees not to violate applicable laws, particularly also including data protection and privacy laws.
- 7.4 The Publisher is permitted to send e-mails or other messages, communications, or contacts with advertising for affilinet and/or the affiliate 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).
- 7.5 The Publisher is obligated to equip its business offer with a notice identifying the provider (section 5 of the German Tele-Media Act (TMG)). The Publisher agrees to design its Advertising Setting in accordance with the then-applicable legal provisions for the protection of consumers.

- 7.6 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 Publisher's Advertising Setting and/or in connection with participation in affiliate programs of affilinet. The design of the Advertising Setting 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 or the Advertiser. The Publisher 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.
- 7.7 The foregoing provisions also apply if the Publisher refers to third-party sites by linking thereto.
- 7.8 The Publisher is permitted to place the Hyperlink to the Advertiser's Website in any number desired, at any location desired, in its Advertising Setting. affilinet is, however, permitted to demand that the Publisher change the placement of the Hyperlink if the latter lends itself to adversely affecting the reputation or good image of the goods or services, the brand, or the business operations of affilinet or the Advertiser.
- 7.9 The Publisher is prohibited from engaging in any and all generation of Views, Clicks, Calls, Leads, and Sales through abuse contrary to these Terms and Conditions of Business or the Advertiser's program terms and conditions. The Publisher shall have no claim to compensation for such Views, Clicks, Calls, Leads, and Sales. Furthermore, the Publisher agrees that in the event of a violation of the provisions of these Terms and Conditions of Business or the terms and conditions of the affiliate program, it will, in addition to providing compensation for any damage and/or losses caused as a result thereof, bear such reasonable costs and expenditures as are incurred by affilinet to safeguard affilinet's interests, including as a result of assertion of claims by a third party as occasioned thereby.
- 7.10 The Publisher is responsible for obtaining regular information on changes in program structures, such as rate changes, in the affilinet system.
- 7.11 The Publisher agrees to pay to affilinet for each case of non-compliance with provisions of this 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.
- 7.12 The obligations of the Publisher as stipulated in section 7 of these Terms & Conditions are assumed by the Publisher, including with effect for the benefit of the relevant Advertiser (termed a "contract for the benefit of third parties").

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

- 8.1 The Account is initially issued to the Publisher indefinitely.
- 8.2 The agreement between affilinet and the Publisher 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 the agreement and/or individual or all individual contracts concerning the Publisher's participation in affiliate programs by way of ordinary termination upon five (5) business days' notice, without stating any grounds therefor.
- 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 Publisher 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 and/or terminate the Publisher's Account within five (5) business days and notify the Publisher thereof, particularly if
  - 9.4.1 within a period of twelve (12) months, the Advertiser has not participated in a program or has not generated any sales, or
  - 9.4.2 the Advertising Setting indicated during registration or application for a specific program is not in accordance with the Advertising Settings actually used.
- 9.5 In the event of deactivation of the Account, accounts will be settled with regard to any Publisher credit balance that may exist. Any credit balance on the Publisher's Account that falls below the threshold mentioned in section 6.1 hereof shall be forfeit.
- 9.6 The Publisher is obligated to remove any and all Hyperlinks and other advertising materials concerning the affiliate program in question from all Websites and Advertising Settings without delay after notice of termination is given, and no longer to participate in the affiliate program in question, including otherwise. From the time at which the notice of termination takes effect onward, the Publisher shall no longer be paid any further compensation whatsoever, even if the Publisher does not remove the relevant Hyperlink or other advertising materials from the Websites or Advertising Settings, as the case may be, or otherwise becomes active for the relevant affiliate program.
- 9.7 A Publisher whose account has been deactivated pursuant to section 9.5 of these General Terms and Conditions of Business is, unless otherwise agreed with affilinet, not entitled to re-register for the affilinet platform. In the event of any violation of this provision, the Publisher will be obligated to render damages to affilinet. Any Publisher credit balance achieved in breach of contract shall be forfeit.

## **10. Liability and indemnification in the event of breach of contract**

- 10.1 affilinet is not responsible for the content of third-party websites, for damage or losses or other disruptions based on software or hardware of the participants being defective or incompatible, or for damage or losses arising based on lack of availability or of perfect functioning of the Internet.
- 10.2 In all other respects, liability – on any legal grounds whatsoever – shall exist only:
  - 10.2.1 in the case of intent and gross negligence on the part of a statutory representative, a member of the managerial staff, or other agents in performance of contractual obligations (Erfüllungsgehilfen),
  - 10.2.2 on the merits, in the case of any culpable violation of an essential contractual obligation (with the term “essential contractual obligation” being used abstractly to designate an obligation whose fulfillment makes the proper implementation of the agreement possible in the first place and in compliance with which the relevant other Party can generally trust), in the case of default and impossibility.
- 10.3 In the case of financial losses and property damage, liability pursuant to section 12.2.2 of these General Terms and Conditions of Business is limited to the amount of the typically foreseeable damage and/or loss.
- 10.4 The foregoing limitations of liability do not apply in cases of non-waivable statutory liability, particularly under the German Product Liability Act (Produkthaftungsgesetz) if a guarantee has been furnished, or in cases of culpable loss of life, bodily injury, or impairment of health.
- 10.3 The Publisher shall indemnify and hold harmless affilinet and its Advertisers 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 Publisher 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.

## **11. Data protection and privacy**

- 11.1 affilinet shall store personal information of the Publisher electronically exclusively for the purposes of establishing, designing the content of, or amending the contractual relationship. The name, address, phone and fax number, e-mail, bank account details, Publisher’s domain, and the relevant affiliate program will be stored. This information will not be disclosed to others except if and insofar as necessary for purposes of handling the agreement. The Publisher is aware that the Advertiser is permitted to contact the Publisher directly by e-mail or phone within the scope of the cooperative relationship and as needed.
- 11.2 affilinet will treat the Publisher’s personal information in accordance with the provisions on data protection and privacy.
- 11.3 In addition, personal information on the use of services will only be collected, processed, or used if and insofar as necessary in order to enable the User to use services (usage information) or to settle accounts regarding services rendered (billing information).

11.4 Within the scope of optional services for use by the Publisher (e.g. single sign-on process), which affilinet may offer voluntarily, it is possible that personal information will be processed for this purpose to a greater extent than mentioned in the provisions above. Such services may be of different types, including future types that are as yet unknown. These services are therefore additionally subject to separate provisions on the use of data in each case, which shall be made accessible to and announced to the Publisher prior to the start of use of the service in question. In the individual case, it may be necessary for you to grant your consent to the use of data again.

## **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 Publisher thereof. If the Publisher does not object thereto in due form or in due time, the amended Terms and Conditions of Business shall take effect two calendar weeks after receipt of the notice, upon the commencement of a new calendar week. An objection by the customer 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 (2) weeks after receipt of the notice. affilinet shall notify the Publisher 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 affiliate programs is subject to change at any time. In the case of all affiliate programs, the Advertiser is permitted to change the compensation, including with effect for affilinet, at its free discretion. The change shall take place by way of communicating the changed compensation on the platform for the relevant affiliate program. The change shall take effect after publication on the platform, as of 12:01 a.m. on the following day.

## **14. Scope of application**

- 14.1 All deliveries, services, offers, and contracts between affilinet and the Publisher are based at all times on these Terms and Conditions of Business. Terms and conditions of business of the Publisher that conflict herewith are therefore invalid unless the application thereof has been expressly agreed in written form between affilinet and the Publisher. Any confirmations to the contrary by the Publisher, making reference to the latter's terms and conditions of business, are also hereby rejected.
- 14.2 Unless otherwise agreed between affilinet and the Publisher, 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 Publisher is a business entity (defined as Kaufmann under German law), the Parties agree that the place of jurisdiction for all disputes with regard to the law of assets arising out of this agreement, 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.