

## **General Terms and Conditions for Media Buying at net:dialogs GmbH**

### **Introduction**

As part of the process of advertisement sales on / via online media, net:dialogs undertakes the placement of advertising on websites and other promotional activities (e.g. e-mail, SMS, WAP etc.). In so doing, net:dialogs works on behalf of the advertising client, broker or agent (hereinafter referred to as the Client) and in its own name and on its own account.

To this end net:dialogs GmbH buys advertising space on websites, subscriber newsletters and e-mail circulars. net:dialogs makes such purchases either directly or indirectly via network, co-promotion or affiliate partners (hereinafter referred to generically as 'Publishers'), who have access to the aforementioned advertising space. Such purchases of advertising space (media buying) may be made either for individual campaigns or as a package for multiple campaigns.

The English Version of these terms and conditions is only intended as translation, whereas the German version is exclusively applicable to all questions of interpretation or disputes and shall be legally binding to net:dialogs and the Client. In case of any contradictions between the English and the German version of these terms and conditions, the German version shall prevail.

### **1. Applicability**

1.1 All deliveries, proposals, contracts and services rendered between net:dialogs and the Publisher shall be based exclusively on the following terms and conditions. Any terms of the Publisher's to the contrary shall not be valid, unless only if their validity has been expressly agreed between net:dialogs and the Publisher. Any counter-affirmations by the Publisher with reference to its own terms and conditions are herewith dismissed.

1.2 Unless otherwise agreed between net:dialogs and the Publisher, any side letter, amendments or addenda to the contract must be in writing in order to be valid.

1.3 No employee of net:dialogs is authorised to enter into any verbal side agreements or to give any verbal warranties.

### **2. Concluding contracts**

2.1 No contract between net:dialogs and the Publisher shall come into force until net:dialogs has confirmed the order in writing. net:dialogs has the right to turn down without giving any reason any orders not yet confirmed.

2.2 Any orders, or amendments to orders already confirmed, issued by the Publisher verbally shall become effective only when confirmed by net:dialogs in writing.

### **3. Areas of applicability**

Media buying may be carried out in either of the following two ways:

(a) Direct media buying

net:dialogs shall contact the Publisher with the aim of booking a campaign. net:dialogs' associated booking order shall specify details including type of campaign, booking / order volume, dates, payment / settlement terms, positioning and advertising media / formats to be used.

(a) Indirect media buying

From within the 'Publisher Area' set up for websites and publishers in net:dialogs GmbH's net:works database system, the Publisher shall self-select from the available list those campaigns that it wishes to have served in vacant advertising spaces. By selecting a campaign / campaigns and using the respective links, scripts, redirects etc. provided (hereinafter referred to as 'advertising media'), the Publisher acknowledges as binding all of the campaign parameters specified in the Publisher Area, especially the settlement procedure, the prices indicated and the maximum term. Such online booking replaces the booking order required at (a) above. The Publisher shall however have no right, neither in technical nor in any other terms, to any specific campaign being served. In the event of relevant client requests, technical restrictions or competitive exclusions, net:dialogs GmbH shall have the right to decline the Publisher's booking of any given campaign and thus to exclude individual pages from the run.

These terms and conditions shall apply to all forms of media buying. Should the booking orders define any rulings to the contrary for any individual points, then said rulings shall have priority over the provisions contained herein. However, if nothing to the contrary is defined in the booking order or no booking order has been sent, the Publisher acknowledges these terms and conditions as binding. If there are any deviating provisions in the booking order, only that part of these terms and conditions directly affected thereby shall be waived. Moreover, all other provisions shall remain unchanged and valid as before. Any and all other amendments must be in writing.

#### 4. Campaign types

net:dialogs makes a general distinction between the following campaign types and payment models / forms of cost calculation:

**CPM = Payment based on ad impressions delivered:** The booking and payment is based on ad impressions. CPM campaigns are booked and served based on ad impressions using the advertising media formats defined in each instance (e.g. banners, pop-up / pop-under ads, buttons, skyscrapers etc.). Costs are calculated and payment made after the end of the specified campaign period in accordance with the client order and the agreed cost-per-thousand (CPM / CPT) ad impressions delivered.

**CPC = Payment based on clicks generated:** The booking and payment is based on clicks. CPC campaigns are booked using the advertising media formats defined in each instance (e.g. banners, pop-up / pop-under ads, buttons, skyscrapers etc.). With CPC campaigns when the advertising is clicked by an Internet user (hereinafter referred to as 'User') forwarding to pre-specified target URLs (e.g. advertisers' websites) is activated and thus one click generated in each instance. Costs are calculated and payment made after the end of the specified campaign period in accordance with the relevant client order and the agreed cost per click (CPC). The ad impressions that may have been delivered in the process are not relevant to the cost calculation. Please take particular note of the exclusions clauses as per 8.4 and 8.5 below.

**CPL = Payment based on leads generated:** The booking and payment is based on valid leads (data records) created by Users fully entering requested data into a form (usually input fields) within the advertising medium (e.g. registration pop-up / pop-under, landing pages or websites) and thus agreeing to submission of their details. The advertisement must be set up on the Publisher's website etc. in such a way that Users themselves can enter their details in the form within it. After the end of the specified campaign period for the campaign in question or after reaching the volume of leads ordered by the client, costs are calculated and payment is made based on the agreed cost per lead (CPL). A lead shall only be valid and chargeable where a User voluntarily and consciously uses the advertisement on the relevant website to have valid data conveyed by net:dialogs to the client for the purpose agreed. No account shall be taken of any invalid client data or duplications.

It is not permitted to link any lead campaign with advertising associated with a compulsory action, such as sending a text message, entering a competition or using a paid e-mail system. Partial pre-filling of forms with User data by the Publisher is permitted only by agreement with net:dialogs GmbH. The use of advertising media within adware or spyware is not permitted at all. Any leads generated in this way will not be remunerated.

Please take particular note of the exclusions clause as per 8.4 below. Valid leads shall be verified by the advertiser and assessed by net:dialogs at its equitable discretion in accordance with these terms and conditions.

**CPO = Payment based on orders / sales:** The booking and payment is based on orders generated. The advertising in such cost-per-order campaigns prompts Users to make an order / purchase action. Only completely fulfilled orders are remunerated (CPO), i.e. if the purchase is confirmed by the client as complete and not cancelled by the duly registered User. Any ad impressions that may have been delivered or any clicks generated in the process are not relevant to the payment calculation.

## **5. Settlement variants and special circumstances**

Settlement shall take place either on an individual basis for each campaign (campaign-related settlement) or, in the case of a booking order covering multiple campaigns / a volume-related media purchase, on the basis of settlement terms agreed for the entire order / purchase, not tied to any individual campaign (campaign-independent settlement).

Where settlement is campaign related and, as defined at '2' above the media purchase is active, an individual booking order will be issued. Alternatively where settlement is campaign related and, as per '2' above the media purchase is passive, a booking will be made by the Publisher via the net:dialogs extranet.

Where the campaign-independent form of settlement is being used, net:dialogs GmbH may in each instance place multiple different campaigns (including campaigns running in parallel) at one uniform price. net:dialogs GmbH shall have the exclusive right in this respect to decide which campaigns these should be and for how long they are to run. The Publisher shall be obliged to adhere to the reaction times for starting and ending campaigns, which are to be specified in such cases in the booking order. Further, the booking order may be based here on any form of cost calculation (CPM, CPL, CPC or CPO).

In the event of a CPM-based agreement, net:dialogs GmbH shall also be at liberty to place lead, click or order-based campaigns without this affecting the agreed form of cost calculation based on ad impressions or clicks delivered. The booking order shall individually specify any other booking conditions (e.g. reaction time and provision of advertising media).

## **6. Campaign term and cancellation**

6.1 The term of campaigns shall either be defined by the booking order or by the maximum campaign duration given in the extranet Publisher Area. Time elements may be replaced for all campaign types by a maximum number of ad impressions, clicks, leads or orders. Campaigns will also frequently be defined by a combination of both criteria.

6.2 Notwithstanding the foregoing, net:dialogs GmbH shall, in the event of extraordinary cancellation of the campaign by its client, for optimisation purposes or in the event of earlier than expected achievement of the volumes requested by the client, have the right to demand the campaign be prematurely ended. In such event the Publisher shall be obliged to have the campaign run stopped immediately upon receiving notification from net:dialogs GmbH. The Publisher shall have no right to remuneration for any volume delivered after such a notification e-mail has been sent by net:dialogs GmbH. The Publisher shall also have no right to any minimum duration or delivery per campaign.

6.3 net:dialogs has the right to cancel contractually agreed advertising orders. Cancellation must be notified in writing. Upon receipt of the cancellation notice, the Publisher shall immediately terminate the online advertising.

6.4 In the event of a cancellation, net:dialogs shall be entitled to fill the advertising space by alternative means.

## **7. Advertising media**

The advertising media to be used shall be provided exclusively by net:dialogs GmbH and comply with the defined advertising media specifications (available to view at [http://www.netdialogs.de/agb/Werbeformen\\_Spezifikation.pdf](http://www.netdialogs.de/agb/Werbeformen_Spezifikation.pdf)). The Publisher may not change, link in any way other than that specified or in any other way manipulate the advertising media or links without consulting and obtaining written consent from net:dialogs GmbH (see also the exclusion clause).

## **8. Exclusion clauses**

Unless explicitly excluded in the booking order by reference to the relevant sub-paragraphs, the Publisher hereby acknowledges the following exclusions as legally binding:

### **8.1 Specific environments exclusion**

It is fundamentally prohibited to place any orders procured by net:dialogs within any environment with sexually explicit content, any portrayal of violence, discriminatory comments or images in respect of race, sex, religion, nationality, disability, sexual persuasion or age, or with any radical political content and/or links to any other sites with such content.

### **8.2 Tag and code changes exclusion**

The Publisher is not entitled to change in any way, no matter for what reason or with what aim, any of the codes or tags provided. Without the agreement of net:dialogs GmbH the partner may also not use these codes or tags in any other way than that prescribed, even should this be technically possible.

### 8.3 Exclusion of e-mails to non opt-in users

The Publisher is not permitted to integrate URL codes from net:dialogs GmbH or its clients into any e-mails to recipients who have not specifically consented in advance to receiving such e-mails by means of an opt-in procedure.

### 8.4 Exclusion of incentives and external aids for lead and click campaigns

Unless explicitly set out as permissible in the booking order (e.g. in the case of co-registrations), the codes and tags provided may not be integrated in such a way that enables the User, by performing a particular action connected with the advertising, to secure any benefit other than taking advantage of the offer, as desired by the advertiser. It is thus explicitly prohibited for clicks or leads to be generated by, for example, sending a text message, participating in a competition or using clicks in a paid e-mail system. It is likewise explicitly prohibited to allow users to share in the revenues you generate through incentives or bonuses. Also prohibited are bonus clubs, automated registration services (e.g. sample ordering) and any and all arrangements in which other motives are used or emphasised in order to increase the frequency of contact or to trigger a compulsory action.

### 8.5 Additional exclusions for click campaigns

Clicks from the same Internet User that are repeated / follow in quick succession shall not be counted as valid. Any clicks produced / initiated automatically by any technical systems or through wilful and/or malicious fraud are likewise not permissible. Any use of click generators is expressly forbidden. Any breach of these conditions shall result in penal proceedings being taken. net:dialogs GmbH reserves the right to use technical systems and log file checks to ensure adherence to the exclusions listed at 8.4 and 8.5.

### 8.6 Unlimited ad serving exclusion for CPM campaigns

If for the campaigns in question restrictions are specified in relation to the frequency with which advertising is to be served to a User per time period or browser session (i.e. a frequency cap), the Publisher shall be obliged to respect and implement such restrictions.

### 8.7 Adware exclusion

The use of advertising media within software that shows the User additional advertising (adware) is not permitted.

### 8.8 Exclusion on passing on advertising media

The use of advertising media is permitted only on the Publisher's website specified on the order form. The Publisher is permitted to pass on advertising media to any third party or to use said media on any other websites.

## 9. Warranty / liability

9.1 In the event of any faults with the online advertising, the Publisher shall in the first instance as it chooses either make good or repeat said advertising. If such action fails, net:dialogs shall be entitled to demand at its discretion either a reduction in the charge or cancellation of the contract. In the event of only minor faults, net:dialogs shall have no right to cancellation.

9.2 Any event of force majeure that makes fulfilment of a service or obligation significantly more difficult or even impossible shall entitle the affected party to defer fulfilment of this service or obligation for the duration of the hindrance plus a reasonable lead time thereafter. Industrial disputes within either party's business or within third-party businesses constitute events of force majeure. If due to the nature of the hindrance there is reason to expect that

the service will not be rendered within a reasonable time, each party shall have the right by virtue of the still unfilled part of the service to cancel this contract either in part or in whole.

9.2 net:dialogs shall be liable in the event of a culpable breach of any primary obligation material to the contract. net:dialogs shall otherwise be liable, no matter on what legal grounds, only if guilty of wilful intent or gross negligence. Unaffected by this is liability due to late payment, for claims arising from the Product Liability Act and/or from Producer's Liability plus any the liability relating to losses arising from loss of life, injury or impairment to health.

9.3 Should net:dialogs be responsible for minor negligence, liability shall be limited to typically foreseeable losses. In such event, net:dialogs' liability shall be restricted to a sum of €5,000 per case of loss. Unaffected by this is liability due to late payment, for claims arising from the Product Liability Act and/or from Producer's Liability plus any the liability relating to losses arising from loss of life, injury or impairment to health.

9.4 Insofar as net:dialogs' liability is excluded or limited, this shall apply also in favour of net:dialogs' representatives, senior employees and agents.

## **10. Data protection**

Any storage or utilisation of the client's data for the Publisher's own purposes is not permitted without the prior written consent of net:dialogs.

Where with net:dialogs' consent the Publisher retains User data generated from individual campaigns for its own use (e.g. in the case of co-registrations), the Publisher shall ensure adherence to the then prevailing provisions of the German Data Protection Act and shall accept full legal data protection responsibility for the data generated and used in this way. This shall also apply in particular to the obligation to inform those affected about such utilisation of the data and to gaining their consent for the proposed use.

The Publisher shall on request provide net:dialogs with information on its adherence to data protection requirements. net:dialogs shall not need to give any reason for requesting such information. The Publisher shall be obliged to provide full details of all appropriate proof, including through presentation of relevant paperwork (documents, log files etc.).

## **11. Indemnity and forfeit of claims to payment**

As long as the cause of such claims can be traced back to a breach of these conditions and/or of any provision specified in the booking order, then in the event of any breach of the provisions at 8 or 10 above, of these terms and conditions in general or of any booking order issued pursuant hereto, the Publisher shall indemnify net:dialogs GmbH and any other affected party from any and all claims made by any client or User.

The Publisher shall further be liable in the event of any irregular conduct for all direct losses suffered as a consequence thereof by net:dialogs GmbH, such as lost income due to extraordinary termination by a client.

Should the exclusions as per 8 above be disregarded, the Publisher shall in addition forfeit the general right to any payment for any volumes it delivers for the relevant campaigns due to the breach. Unless it is possible to show without doubt what proportion of the impressions, leads or clicks has been delivered or generated due to a breach of these rules, net:dialogs GmbH shall be entitled to refuse payment entirely.

## **12. Reporting, basis for settling accounts and payment terms**

net:dialogs GmbH shall prepare for the Publisher on a monthly basis, in each instance by the 15<sup>th</sup> of the following month, a report to be used as the basis for settling the account. Any objections to this report must be raised in writing within 7 days. If no objections are raised, or if they are raised too late, the billing basis shall be deemed accepted. The use of links by a Publisher on its own server shall be permitted with the proviso that the number of times these are shown is counted by net:dialogs GmbH. The report to be produced by net:dialogs shall not constitute any acknowledgement that any leads recorded are in fact valid leads.

The definitive number of advertisements served / ad impressions achieved shall be determined exclusively by the tracking performed by net:dialogs adserver system.

Accounts shall be settled by credit transfer on the basis of the reports produced. Payment shall be due 45 days from preparation of the reports on which settlement is based.

## **13. Right of change**

If net:dialogs intends to change its General Terms and Conditions, net:dialogs shall notify the Publisher of this. Unless the Publisher raises objection in the proper form and within the due period, the amended terms and conditions shall come into force at the start of the first new calendar week two weeks after receipt of notification. To be in the proper form and within the due period, any objection must be made in writing and received by net:dialogs within one week of receipt of the notification. net:dialogs shall advise the Publisher of the ability to raise an objection, of its required form and deadline and of the legal consequences of not raising an objection in said form or on time.

## **14. Miscellaneous**

The contracting parties mutually undertake to treat as confidential all information and data that they receive from the other party in connection with performance of this contract and not to make this accessible to any third parties. This duty shall extend beyond the end of the contract.

The Publisher shall be entitled to assign or transfer receivables arising from this contract only with the prior written consent of net:dialogs GmbH. The Publisher shall be entitled to offset or withhold payments only against its own undisputed claims or such claims as have been judged valid by a court of law.

All legal relationships between the parties shall be governed by the laws of the Federal Republic of Germany. The UN Sales of Goods Acts shall not apply. Place of performance shall be Montabaur. If the Client is a merchant, a legal entity under public law or special property under public law or has no general jurisdiction in Germany, then jurisdiction for all disputes arising from this contractual relationship, including those relating to cheques or bills of exchange, shall rest exclusively with the courts of Montabaur.

Should any of the above provisions be or become invalid, the validity of the remaining provisions shall remain unaffected. The invalid clause shall be replaced in such instance by another clause that in commercial terms and in its intention comes as close as possible to the invalid one.