

The GTC of a+s Online GmbH

The following General Terms and Conditions of Business ("GTC") form part of all online marketing contracts with a+s Online GmbH, Stuttgarter Straße 41, 71254 Ditzingen.

1. GENERAL PROVISIONS

These terms and conditions of business apply to all, including future, business relationships between a+s Online GmbH (a+s) and its clients and suppliers relating to online marketing. They apply in particular to all incidental and additional services to be performed in this connection, in particular to

- marketing of third-party e-mail addresses
- display advertising
- address generation (co-sponsoring, co-registrations, etc.)
- general services such as consulting, website design, affiliate marketing.

a+s works exclusively with entrepreneurs, i.e. persons acting in pursuit of their commercial activities. Divergent, conflicting, or supplementary GTC of the client do not form part of a contract unless their applicability is expressly agreed in writing when the contract is made.

2. ADDRESS GENERATION AND TRANSFER

The supplier warrants that the delivered address data are legally unobjectionable; in particular, they are compatible with applicable data protection and competition law. The supplier warrants, in the case of e-mail address data in particular, that a legally unobjectionable double opt-in exists for all address data and can be produced where necessary. "Double opt-in" means that, after signing up, the user receives a confirmation e-mail, which he must confirm; only then does his consent become effective.

If legal unobjectionability is lacking, the supplier agrees, in the event that third parties assert claims for infringements of rights, to indemnify a+s against all liability vis-à-vis third parties, to assist a+s in its legal defence, and to assume any damages, along with the costs of adequate legal defence, at the request of a+s.

a+s grants the client for the agreed term the authority, defined in the order in specific terms as necessary, to use the data of third parties for business purposes, generally for its own advertising purposes, in compliance with applicable law (data protection and competition law in particular).

Unless otherwise agreed, all addresses provided by a+s are intended for the client's own use in connection with its direct advertising campaigns. Any resale or transfer for use by third parties is generally prohibited; otherwise, it is subject to the prior permission of a+s and must be adequately remunerated according to a separate agreement. Improper use can be adequately substantiated by the submission of a trap address inserted for that purpose into the data sets. If data sets have been used improperly, the client owes a contractual penalty of € 5,000.00 for each instance of misuse; a+s expressly reserves the right to assert separate claims for damages.

Data sets are provided on a suitable data medium. Alternatively, a+s is authorised to place them on the Internet in retrievable and storable format for download or to send them by e-mail.

Acceptance of an order is conditional on a+s itself being supplied in a timely manner if it has entered into a specific covering arrangement with a third party for that purpose. a+s undertakes that, should such a third party fail to deliver the addresses, it will promptly inform the client of the non-availability and promptly refund any consideration paid by the client.

3. DISPLAY ADVERTISING

a+s supplies and sells advertising inventory such as, for example, banners, buttons, pop-ups, interstitials, sticky ads on web pages and within third-party advertising networks.

Advertising materials must be supplied by no later than two business days before the campaign begins and in the gif and/or jpg image format in at least four standard sizes (468x60, 728x90, 300x250, 120x600). In the event that they are supplied late, or alterations to and/or adaptations of advertising materials become necessary after they are supplied and the client is responsible for this, no guarantee is assumed for their proper delivery. The client will bear the costs of the creation and supply of the materials or templates. This applies also to the costs of alterations for which the client bears responsibility. In the event of demonstrable count discrepancies with the client's ad server, the supplier agrees to supplement the supply within reasonable limits.

4. E-MAIL MARKETING

a+s supplies, sells and rents permission addresses for standalone e-mail campaigns from third-party address lists.

Delivery of advertising materials from the client to a+s must be made at least two business days before the campaign begins. In the event that they are supplied late, or alterations to and/or adaptations of advertising materials become necessary after they are supplied and the client is responsible for this, no guarantee is assumed for their proper delivery. The client will bear the costs of the creation and supply of the

materials or templates. This applies also to the costs of alterations for which the client bears responsibility.

a+s is permitted at its own discretion to exceed the number of contacts booked in the order. This does not give rise to any obligation towards a+s. It is always the contractually agreed number of contacts for which remuneration is required.

Cancellation incurs a charge equivalent to 25 % of the order value once an order has been placed, 50 % 48 hours before dispatch, and 100 % 24 hours before dispatch.

Only proper dispatch of the e-mail is guaranteed; actual receipt thereof is not guaranteed.

5. RESPONSIBILITIES OF THE CLIENT AND THE SUPPLIER

The client or supplier is obliged to undertake, at a+s's first request, all acts required for proper performance by a+s. The precise actions by the client or supplier that are required for proper performance are to be determined in each particular case by a+s.

Should the client or the supplier fail or refuse to perform the actions requested of it, a+s will not be obliged to perform the service for which the client's or supplier's act of assistance is required. a+s will not, however, thereby lose its right to remuneration for the service.

a+s guarantees the permanent technical availability of its service, from which deviations of approximately 5 % on an annual average are allowed. Excepted are periods during which delivery cannot be made owing to disruptions beyond the control of a+s (force majeure, fault of third parties, etc.). The supplier and/or website operator guarantees vis-à-vis a+s the permanent technical availability of its Internet site. Excepted are periods during which the site cannot be accessed owing to disruptions beyond the control of the company (force majeure, fault of third parties, etc.).

Advertising materials and work materials, including any data sets or databases, provided by a+s remain its property. Unless they are intended or used for transmission to clients, the advertising materials and work materials must be returned by the agency or the client unbidden upon termination of the contract.

Deadlines may be postponed by no more than three business days before dispatch. Templates and subject lines must be supplied no later than 48 hours before dispatch. Template, tracking, or subject line changes may be made once, no later than 24 hours before dispatch, at no charge; otherwise, € 95.00 plus value-added tax will be charged per change. Unless otherwise agreed, the order is for a template with a subject line. The client permits a+s to include the client in its list of references. a+s is entitled to engage subcontractors.

6. PROVISION OF BASIC MATERIAL BY THE CLIENT

If the client provides design elements, logos, texts and/or graphics for the advertising banners, websites, newsletters, mailings, etc., to be created, the client and a+s will confer on the technical feasibility of the basic material provided by the client.

The client grants a+s the non-exclusive right, limited to the term of the contract, to use the basic material. The client guarantees that it is entitled to provide the basic material for the purpose of contractual performance.

The content provided by the client must be in compliance with applicable law and, in particular, must not violate trademark, competition, or copyright law or constitute a violation of the general personal rights of a third party. Otherwise, the client will indemnify a+s at its first request against all claims asserted against a+s by third parties because of the advertisement.

7. COMMISSIONABLE TRANSACTIONS

a+s will receive a commission for the deals closed with advertising clients and/or data set suppliers during the contract term. Commissionable sales revenue is the net invoice amount; for orders through advertising agents, it is the net agency amount, and any later charges or credits also must be taken into account, in each case exclusive of value-added tax. In the case of special advertising formats, commissionable sales revenue is the remuneration agreed in each particular case for transmission of the special advertising on the online service.

In the event of unusual price changes or new promotional formats that open up additional sales potential, or if new electronic publications are transmitted, the commission rate can be re-set from the date of the change by mutual agreement according to the new circumstances and taking into account all influencing factors.

8. ACCRUAL OF THE COMMISSION CLAIM AND BILLING

a+s grants its address and data set suppliers a commission, to be agreed separately, for the deals closed with clients during the contract term.

The suppliers' claims to a commission accrue only upon payment by the client (advertising customers/data set buyers). a+s is entitled to deduct from the supplier's invoice any cash discounts received by the client. The invoiced advertisement and/or data set sales will be charged to the client.

The client will immediately review the statements presented to it. The statements are deemed acknowledged if no objections are raised against them within two weeks after their receipt.

The supplier's commission, together with the statutory value-added tax, is due and payable upon receipt of payment by a+s. If clients (advertising customers or data set buyers) fail to pay their invoices after a second reminder, the supplier of a+s is entitled to assign its portion of the claim against the third party.

9. CLIENT PROTECTION

In the case of ad marketing, the client of a+s is prohibited from entering into similar marketing contracts with other providers during the term of this contract.

In the case of address data purchasing, the client is, of course, free to acquire other data sets from third parties. It must ensure only that the data sets are not irreversibly intermingled.

10. ACCEPTANCE

The client must review and release the content to be dispatched before it is dispatched. Any flaws or corrections must be promptly reported to a+s. To enable the client to conduct such a review, a+s will send the client a test e-mail. If the client does not respond within the response period specified by a+s, the test mail will be deemed flawless and accepted.

The same applies to other advertising materials and to the delivery of data sets.

11. REMUNERATION

The amount of remuneration is based on the prices listed in the offer or the order confirmation (creation costs, set-up costs, etc.). All prices are net prices, unless the value-added tax is expressly stated in the offer or the order confirmation. If the client is in arrears of payment, a+s may interrupt all work and other services until payment is received.

Any agreed performance deadlines will be extended accordingly. Further rights of a+s under this contract and according to the provisions of law are reserved.

If the client is in arrears of payment for a period of more than two weeks, or if the client is in default of an amount greater than € 3,000.00 despite a written reminder, then a+s is entitled to terminate this contract without notice. Claims for damages and other legal claims by a+s remain reserved.

12. LIABILITY

If a+s has not collected addresses on its own but rather acquired them from a third-party provider (in particular, by means of purchase or rent from third-party distributors), a+s assigns, in the event that a third party brings a claim against the client, all rights of recourse against the third-party provider to which a+s is entitled by reason of the breach of duty. Liability on the part of a+s is excluded, however.

Should a third party bring a claim against the supplier for content provided by the client that is not in compliance with applicable law, a+s assigns all rights of recourse against the client to which a+s is entitled by reason of the breach of duty. Liability on the part of a+s is excluded, however.

For damage other than that arising from injury to life, limb, or health, a+s is liable only to the extent that the damage arises from wilful misconduct, gross negligence, or a culpable breach of a material contractual duty by a+s, its employees, or its vicarious agents. This applies also to damage arising from a breach of duties in contractual negotiations and from the performance of unlawful acts. Any further liability for damages is excluded.

Except in the case of wilful or grossly negligent conduct, a breach of a cardinal duty, or injury to life, limb, or health by a+s, its employees, or its vicarious agents, liability is limited to such damage as is typically foreseeable when the contract is entered into and is otherwise limited in amount to X times the order volume. This applies also to indirect damage, lost profit in particular.

The provisions of the German Product Liability Act [Produkthaftungsgesetz] remain unaffected.

13. SEVERABILITY CLAUSE, APPLICABLE LAW, PLACE OF JURISDICTION

If one or more of the provisions made herein are invalid, this will not affect the validity of the rest of the agreement. The contracting parties will make a legally valid replacement provision that comes as close as possible to the economic effect of the invalid provision.

The law of the Federal Republic of Germany applies to the exclusion of the UN Sales Convention. Mandatory provisions of the state in which the client or supplier has its customary residence remain unaffected. The place of jurisdiction for disputes arising from the contract is the registered office of a+s if the client or supplier is a merchant, a legal person under public law, or a special fund under public law. No agreements collateral to this contract have been made between the parties. Collateral agreements must be in writing to be valid.