

**General Terms and Conditions for all Transactions with Advertising Clients, Brokers and Agents for Advertisement Sales**

**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.

Execution of all orders placed and accepted is based on these terms and conditions. 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 Client shall be based exclusively on the following terms and conditions. Any terms of the Client's to the contrary shall not be valid, *unless* only if their validity has been expressly agreed between net:dialogs and the Client. Any counter-affirmations by the Client with reference to its own terms and conditions are herewith dismissed.

1.2 Unless otherwise agreed between net:dialogs and the Client, 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 Client 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 Client verbally shall become effective only when confirmed by net:dialogs in writing.

2.3 The price lists applicable to all contracts shall in each instance be those in force at the time of contract confirmation.

2.4 Through confirming an order, net:dialogs shall be entitled but not obliged to provide services to support the relevant Client within the scope of these terms and conditions and at the rates published on the then current price list. The Client shall have no right to demand net:dialogs fulfil the contract. Insofar, however, as net:dialogs does provide any services, these must be rendered in accordance with the contract and remunerated accordingly.

### **3. Material**

3.1 The Client shall ensure that the necessary information, data, files and other materials are delivered on time, completely, free of errors and omissions and in accordance with all contractual agreements. The Client shall further ensure that all such materials are suitable for the agreed purposes, especially on-screen presentation within the context in question, and that they match the type and size booked.

3.2 Unless otherwise agreed, all graphics must be provided in GIF or JPEG format. The target addresses of each of the links (Internet URLs) must also be supplied. Full-size banners in 468 x 60 pixel format may not exceed a file size of 15 kilobytes (for GIF or JPEG) / 20 kilobyte (for Flash ads). Pop-ups in 200 x 300 or 250 x 250 pixel format may likewise not have a file size above 15 kilobytes (for GIF or JPEG) / 20 kilobytes (for Flash ads). Where Flash ads are being used, the following information must be specified when delivering the advertising materials:

The version of Flash used, a fallback GIF, the click URL (of the link) and information on any scripts used. Flash ads must be programmed to net:dialogs' specifications. net:dialogs must have possession of the material at least three working days prior to the ad going live. Any material in rich media format must be with net:dialogs at least five working days prior to going live. Material can be sent as an e-mail attachment to [ads@netdialogs.net](mailto:ads@netdialogs.net).

In good time prior to the advertising going live, and in any case not later than 14 days before supplying the advertising material, the Client must provide the following details using an order form as per Appendix 1 to these terms and conditions: Client and campaign name, booking period, site booked and position on the site, the advertisement format and a contact name for any queries.

If production of the banner (advertisement with or without link to the advertiser's offer) is being done by net:dialogs, the relevant materials must be delivered not later than 14 days before the advertising is due to go live. net:dialogs accepts no responsibility for the materials supplied nor in particular shall it be under any obligation to retain these or to return them to the advertiser. Unless otherwise agreed, all rights to banners and animations created by net:dialogs shall remain with net:dialogs.

3.3 In the event of advertising materials not being supplied on time, being delivered incomplete or not in accordance with the technical specifications, net:dialogs shall be entitled to fill the earmarked positions in other ways until the materials are properly supplied. net:dialogs shall not be obliged to make good the advertising exposure lost due to any such delay. Fulfilment of the order may, however, be made good at net:dialogs' discretion. In such event, the Client shall be obliged to pay the full price of the advertising.

3.4 net:dialogs shall determine at its sole and own discretion the websites on which advertising is placed. In doing so, net:dialogs shall not book any advertising on websites that feature exclusively or predominantly any of the following material: Sexually explicit, indecent content, portrayals of violence, discriminatory remarks or images in relation to race, sex, religion, nationality, disability, sexual orientation or age, or any radical political content.

### **4. Approval**

4.1 Where advertising material is created by net:dialogs or sub-contractors, net:dialogs shall be entitled but not obliged to edit the material and – to such extent as is necessary or advisable for its optimum use – to make changes and corrections to it, especially to the

dimensions. Once it has gone live, the Client shall be obliged to check the advertising without delay and to raise objections to any obvious errors within the first week of the advertising run. Any warranty claims for obvious errors not objected to within said period shall be excluded.

4.2 Where advertising material is made available on a test page for approval, the Client shall be notified of this and shall be required to approve the page or raise objection to any errors by the first working day after such notification. If the Client raises no objection, the advertising shall be deemed approved and the Client shall bear the cost of any changes it later requests.

4.3 In the case of advertising material produced by the Client, net:dialogs shall be entitled but not obliged to edit the material in such manner that it can be worked with / installed by the adserver system or website. This applies in particular to technical specifications, programming and measurements. Any changes should only be made by net:dialogs if it has not been possible to contact the Client to have the material improved.

4.4 net:dialogs gives no assurances of any kind over the possible positioning or order of any advertising placed and shall be entitled at its equitable discretion to refuse to place advertising for editorial or any other reasons.

## **5. Legal responsibility**

5.1 Sole responsibility for the content of advertising materials and platforms shall be borne by the Client. This applies in particular even where advertisements are produced by net:dialogs on the Client's behalf.

By placing an order, the Client confirms that it has obtained all necessary rights of use from the owners of intellectual property rights and/or other rights to the advertising documents and copy it has provided and that it is free to use these. The Client further guarantees that placement of the advertising will not interfere the rights of any third party.

5.2 The Client indemnifies net:dialogs from all costs and claims from third parties caused by any non-adherence to the above provisions.

5.3 The Client guarantees that the content of the advertising does not contravene any applicable law or legal or official bans and is not contra bonos mores. net:dialogs shall be entitled but not obliged to check the content of the advertising. net:dialogs shall be entitled to remove any advertising that contravenes the aforementioned provisions and any links that lead to content in breach of applicable law or legal or official bans or that is contra bonos mores. Prior notice to desist does not have to be given. net:dialogs shall notify the Client without delay of the action taken. The Client shall remain liable to pay the agreed remuneration save only if it can show that net:dialogs has removed the advertising without due justification. The Client shall have no right to make any other claim for reimbursement or compensation.

5.4 net:dialogs is committed to the ICC guidelines on interactive marketing communication on the Internet, available to view at ({{ HYPERLINK <http://www.icc-deutschland.de/icc/1.3.php?sid=798e8830a89eb42c608f8599f390dc68> }}). net:dialogs shall remove any advertising that contravenes these guidelines. Clause 5.3 applies accordingly.

## **6. Charges**

6.1 The Client shall pay a fixed price for the advertising services either agreed in advance or in accordance with the then current price list. Unless otherwise agreed, all billing shall be

on a CPT (cost per thousand ad impressions) basis. Unless agreed otherwise in the order confirmation, net:dialogs shall by not later than the 15<sup>th</sup> of the following month send the Client by e-mail a statistics report on the success of the advertising for the previous month, which shall provide information on the number of ad impressions achieved.

Where any advertising material has been produced by net:dialogs the Client shall pay a separate fee on a time and materials basis as per the then current price list.

Invoices shall be issued either upon receipt of booking at the start of the campaign or monthly based on the advertising run. net:dialogs shall be entitled to raise interim invoices for campaigns running over longer periods.

6.2 net:dialogs shall be entitled to require a prepayment or deposit from the Client. In such event, the Client's advertising activity shall not begin until the prepayment or deposit has been received by net:dialogs.

6.3 If the Client does not settle net:dialogs' invoice within 14 days of receipt, net:dialogs shall be entitled, in addition to all other rights, to stop the advertising immediately without further notice and with no right on the part of the Client to any liability claim against net:dialogs. net:dialogs may in such instance also stop all of the Client's other existing campaigns.

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

## **7. Price adjustment**

7.1 net:dialogs shall be entitled to adjust the agreed charges. net:dialogs shall notify the Client of this by letter or e-mail one month before any change is due. In such event, the Client shall be entitled to raise written objection to the increase up until two weeks before the due increase date. net:dialogs shall make specific reference to this right again in its price increase notification.

If the Client does not make use of its right of objection, the new charges shall apply from the due increase date. If the Client does object to the increase, net:dialogs shall be entitled to terminate the contract without notice effective as of the increase date.

7.2 Should the conversion rate for a period of 2 days fall below 2%, net:dialogs shall be entitled to make changes to the agreed charges. net:dialogs shall notify the Client of this by letter or e-mail two working days before the change is due. In such event, the Client shall be entitled to raise written objection to the increase up until one working day before the due increase date. net:dialogs shall make specific reference to this right again in its price increase notification.

If the Client does not make use of its right of objection, the new charges shall apply from the due increase date. If the Client does object to the increase, net:dialogs shall be entitled to terminate the contract without notice effective as of the increase date.

## **8. Discounts, notice of cancellation and agency buying terms**

Discounts are granted only on pure media bookings. Creative costs for advertisements are excluded from the discount structures shown on the price lists.

We grant 15% agency commission on proof of agency credentials and evidence of client billing.

Any cancellations of advertising orders must be made in writing. Cancellations can be made at no cost up to two weeks before the advertising start date. A cancellation charge of 30% of the net order value is payable for cancellations made less than two weeks before and up to the advertising start date. Where cancellation occurs after the advertising has begun, net:dialogs shall be entitled to invoice 50% of the net order value of the online advertising still to run at the time it is stopped. The price for the online advertising already run will also be invoiced, with the price for this based on the discount rate applicable to the more limited volume.

net:dialogs shall be entitled by giving 30 days notice to cancel orders from Clients at any time without stating a reason. No liability of any kind shall arise from this on the part of net:dialogs other than repayment of any invoice amounts already paid for the relevant campaign, less charges for services already rendered.

## **9. Payments**

9.1 All charges are payable 14 days from date of invoice. Invoice payments are to be made without any deductions to an account specified by net:dialogs. The date payment enters the account shall determine whether it has been made on time. Deduction of any discount requires specific written agreement.

9.2 If the due payment date is missed, net:dialogs shall be entitled to demand annual late payment interest of 8% above the then prevailing base rate from the point at which payment becomes overdue. If net:dialogs is able to show that such default has caused a greater loss, it shall be entitled to claim this. The Client shall however be entitled to prove to net:dialogs that the late payment caused no loss or one of a significantly lower magnitude.

9.3 If the Client terminates the contract other than for good cause shown (Art. 649, sentence 1 of the German Civil Code), it must pay for all services properly rendered up to its termination. The Client shall further be required to pay net:dialogs as compensation a flat 10% of the value of the unfinished part of the order. The Client shall retain the right to show that net:dialogs' loss was less than this. net:dialogs shall not be excluded from claiming unusually high losses in individual cases.

9.4 All invoices shall be based on the reports that net:dialogs produces for the Client. Any objections to these reports must be raised in writing within 7 days. If no objections are raised or are raised too late, the basis for invoice calculation shall be deemed accepted.

## **10. Warranty**

10.1 net:dialogs' duty for all advertising activity shall be solely to distribute the advertising properly. net:dialogs shall, however, not be responsible for said advertising reaching, being accessed or noticed by its intended recipients nor for its success.

10.2 If advertising activities of any kind are not, not fully or properly run or deployed at the originally intended time, net:dialogs shall be entitled and obliged to make good the missed advertising within a reasonable period. If two such make-good attempts fail, the Client shall be entitled to cancel the contract or pay a reduced price.

The Client shall have no rights beyond this, especially no right to claim to compensation.

10.3 In all other respects net:dialogs assumes liability for any deficiencies as per statutory provisions. No claims shall be entertained in relation to deficiencies that do not materially impair the efficiency of the service rendered. Claims of any deficiencies are to be made in writing without delay. net:dialogs shall be entitled to make due improvements. The Client shall not be entitled to make any claims over and above this until two attempts at improvement have failed or net:dialogs has declined to make such improvement.

10.4 Where the manner of presentation giving rise to a complaint is caused by the use of unsuitable display hardware or software (e.g. browser) or by faults on other companies' communications networks or by computer failure at Internet providers or online services or by incomplete and/or non-updated content on commercial or non-commercial providers' or online services' proxy servers (temporary storage), which lie outside of net:dialogs' sphere of influence/responsibility, or by failure of a server lasting not longer than 24 hours (continuous or accumulative) within a period of 30 days from the start of the contractually agreed run, or is due to force majeure, industrial action or other reasons for which net:dialogs is not responsible, this shall not constitute an error in running the advertising in the sense referred to above.

10.5 Should errors arise in the fulfilment of one order, the Client shall not be entitled to withhold payment for any other. Offsetting shall be permitted only if the Client's claim presented for offsetting is not disputed or has been ruled valid by a court of law.

## **11. net:dialogs' liability**

11.1 net:dialogs shall be liable in the event of a culpable breach of a contractual obligation of material relevance for achieving the object of this contract (a cardinal duty). net:dialogs shall otherwise be liable only on the merits of wilful misconduct ("Vorsatz") or gross negligence ("grobe Fahrlässigkeit").

11.2 In the event of breach of a contractual obligation of material relevance for achieving the object of this Agreement (cardinal duty) caused by slight negligence ("leichte Fahrlässigkeit"), liability shall be limited to reasonably foreseeable losses. net:dialogs' liability in such event shall be limited to a maximum sum of €5,000 per damaging event.

11.3 net:dialogs shall not be liable to business clients for any agents' gross negligence unless they have breached a contractual obligation of material relevance for achieving the object of this contract (cardinal duty).

11.4 Liability for claims arising from product liability law and producer's liability and any liability relating to losses arising from loss of life, injury or impairment to health is unaffected by clauses 11.1 to 11.3.

11.5 Insofar as net:dialogs' liability is limited or ruled out in accordance with clauses 11.1 to 11.4, so shall this apply to net:dialogs' representatives, senior employees and agents.

## **12. Right of withdrawal**

12.1 Even after confirming the order, net:dialogs reserves the right to refuse to run the advertising if reasons exist that make it unacceptable for net:dialogs to carry out the contract. This shall particularly be the case if running the advertising violates any copyright, competition, media, penal or other legal provisions.

12.2 The Client has the right to be informed of the reasons for the refusal. If the Client is unable to supply any new advertising material that complies with net:dialogs' requirements, the Client shall have the right to claim reimbursement of any payments already made. If no fault applies to net:dialogs in relation to it not being acceptable to carry out the contract, then costs already incurred by net:dialogs shall be deducted from such reimbursement claim. The Client shall have no right to any further claims over and above this. If in such instance the Client has not yet made any payments, net:dialogs shall be entitled to demand reimbursement for any and all costs already incurred.

### **13. Provision of services and assignment**

Without net:dialogs' specific prior consent, the Client shall not be entitled to assign or transfer to any third party any rights or duties arising from this contract.

net:dialogs shall be entitled at any time to assign or transfer rights or duties arising from this contract to third parties. The Client hereby specifically consents to this. If the Client has not been informed of any such transfer, it shall be entitled to clear what it owes by making payment to net:dialogs.

net:dialogs shall also be entitled to transfer provision of the service of parts thereof to third-party service providers or agents for these to take care of independently.

### **14. Confidentiality and data protection**

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.

net:dialogs shall in particular be entitled to forward the Client's product-level gross advertising spend to Nielsen Media Research for publication.

### **15. Right of change**

If net:dialogs intends to change its General Terms and Conditions, net:dialogs shall notify the Client of this. Unless the Client 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 Client 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.

### **16. Miscellaneous**

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.