

General terms and conditions

Convenience translation – the legally binding version shall always be the German version

The Performance Network Group GmbH

Date: March 2017

1 Scope

- 1.1 These general terms and conditions (“GTC”) apply to all legal transactions between The Performance Network Group GmbH, Große Theaterstraße 7, 20354 Hamburg, Germany (“TPNG”), and the client regarding services and offers by TPNG.
- 1.2 The GTC especially apply in particular to contracts on providing services in the area of e-mail and online marketing (“individual contracts”). Unless otherwise agreed, the GTC shall also apply for similar future individual contracts in the version most recently communicated in text form at the time of contract conclusion without TPNG having to refer the client to the GTC in every individual case.
- 1.3 Any terms and conditions by the client deviating from these shall only become part of the contract if they are explicitly confirmed in writing by TPNG.
- 1.4 TPNG shall provide all services defined in these GTC only to clients who are entrepreneurs within the meaning of § 14 BGB [German Civil Code], public-law entities or special public utility funds.

2 Services by TPNG

- 2.1 TPNG provides customers with all sorts of services in the area of e-mail and online marketing. These include in particular the following services: e-mail address marketing, lead generation, data synchronisation, online market research, newsletter dispatch management, affiliate marketing, search engine marketing, social media marketing, data analyses, digital analytics, display marketing, e-mail campaigns, concept and strategy consulting, creation and also further communication and advertising measures.
- 2.2 The services specifically to be provided by TPNG shall be agreed by the parties specifically in the form of individual contracts. Service contract law applies.
- 2.3 Any agreements concluded with the customer individually or in individual contracts take priority over these GTC.

3 Conclusion of individual contracts

- 3.1 An individual contract for providing services by TPNG must be made in writing to become effective.
- 3.2 In the individual contract, the service to be provided by TPNG is defined by the parties. For this purpose, the individual contract contains at least the following information:
 - Name/description of the commissioned marketing service
 - Date/period of time of the service
 - Purpose of the commissioned marketing service (e.g. generation of a certain number of leads, dispatch of a certain number of newsletters, delivery of a certain number of ad impressions, achievement of a certain reach)
- 3.3 Should the amount of remuneration not be determined in the individual contract, the usual remuneration shall be deemed as agreed.
- 3.4 Insofar as TPNG offers a client the provision of specific services on the basis of an individual contract, TPNG is bound by that contractual offer for the time of two weeks upon receipt by the client, as long as no deviating commitment period has been intended. An offer made in writing or text form concerning the conclusion of an individual contract can only be accepted by the client in the same form.
- 3.5 TPNG can accept offers by the client concerning the conclusion of an individual contract by confirming the order in written form in the course of two weeks. Insofar as it is relevant for the offered individual contract, the offer shall include information on any documents and materials to be provided by the client, amount and due date of remuneration in addition to the minimum details mentioned in Section 5.

4 Provision of services

- 4.1 TPNG shall provide the services determined in the individual contract with due professional and technical care in accordance with the generally acknowledged commercial principles of online marketing. Service contract law applies. Unless explicitly agreed otherwise, TPNG is in particular not obliged to achieve a certain commercial success or create a certain work.
- 4.2 If TPNG are obliged to realise an e-mail campaign with a certain reach, the size of the mailing lists (lists) used by TPNG are relevant for measuring the actually achieved reach.
- 4.3 Should TPNG give specific figures to the client before an individual contract is concluded (e.g. in form of a presentation) that obviously depend on the behaviour of third parties (e.g. conversion rates, opening rates, clicking behaviour) and are relevant for the

purpose of the individual contract, these figures are, unless stated otherwise, merely examples, forecasts or estimates based on TPNG's past experience or on generally accepted methods. Subject to a deviating agreement, TPNG therefore in particular does not guarantee the achievement of a certain minimum number of leads, clicks or a certain conversion rate.

- 4.4 So as to provide the services, TPNG are entitled to subcontract third parties at their own discretion.

5 The client's obligation to cooperate

- 5.1 If TPNG's providing the services requires acts of cooperation by the client, the client will carry them out completely and in time, in any case at the latest three days before the agreed start of the provision of services. In particular, the client shall provide all data, information and materials in the agreed form as far as this is necessary for the conclusion of the individual contract ("customer material").
- 5.2 TPNG is entitled but not obliged to edit the customer material and make alterations as long as this is necessary for the realisation of the services and not unacceptable for the client.
- 5.3 Insofar as the client is intended to transmit customer material to TPNG electronically or else his CRM system or similar systems are to be connected to systems of TPNG via an interface for data transmission, TPNG will name the necessary technical specifications for interfaces to be used at TPNG. Should TPNG realise that the client's technical detailed specification necessary for this is faulty, incomplete, impossible to objectively implement or not clear, TPNG will inform the client immediately. The client will ensure rectification and adaption of the technical detailed specifications within an appropriate period of time. Delays or additional work due to deficient or missing detailed specification or due to its adaptation will be taken into account when calculating the service periods or else appropriately compensated separately.
- 5.4 If services have to be approved by the client, or there is a legal or agreed obligation to accept (partial) delivery, the client shall immediately declare approval or else acceptance in text form as soon as the particular services have been essentially provided according to contract. If the client does not approve or accept the services provided within three working days after delivery, the particular service is considered approved or else accepted.
- 5.5 If due to the client's non-compliance with the duty to cooperate the particular service cannot be provided or the client does not comply with his obligation to cooperate upon

being requested by TPNG, TPNG can withdraw from the individual contract after abiding by an appropriate grace period or terminate the individual contract extraordinarily for the future. Potential claims for damages caused by the client's non-compliance with the obligations to cooperate remain unaffected. TPNG's claim for the compensation of additional work as a result of the non-compliance with the obligation to cooperate remains unaffected.

- 5.6 Each party shall appoint contact persons for issues of the cooperation, who are entitled to make and accept declarations. Until such a notification has been received, the previously determined contact persons shall be considered entitled to make and accept declarations within the scope of their hitherto existing power to act as a representative.

6 Defaults in performance

- 6.1 Should the provision of a service owed by TPNG fail due to reasons that do not fall into TPNG's area of responsibility or influence, due to technical issues, higher force, strike, legal regulations or other reasons in whole or in part, TPNG are entitled to make up for or postpone the cancelled service at their own discretion insofar as this is possible and acceptable for the client. If services are postponed within a reasonable time that is acceptable for the client after the elimination of the obstacle to performance, TPNG's claim to remuneration remains valid.
- 6.2 If due to the client's improper compliance with the duty to cooperate TPNG are unable to provide the services at the agreed time or else within an agreed time frame, the time of service or else time frame of service shall be delayed or extended accordingly, but only to a maximum of six months. If services cannot be provided within six months after the client's first improper compliance with the duty to cooperate, this is considered a cancellation in accordance with Subsection 15.6.
- 6.3 Should TPNG become aware that an agreed deadline cannot be met, TPNG shall inform the client about the anticipated duration and the reason for the delay immediately.
- 6.4 As far as the provision of the services depends on services by third parties that are not vicarious agents of TPNG, TPNG are not liable for these third-party services (especially network services) being constantly available to the client without interruptions, free from defects and securely. In case that other, deviating service levels apply (especially regarding accessibility, availability etc.), this has to be explicitly agreed in an individual contract.

7 Guarantee

- 7.1 Insofar as the performance of work is required, the client is entitled to statutory warranty rights. The guarantee is subject to the appropriate legal requirements, with the condition that the guarantee claims will expire within one year after acceptance, unless there are claims for damages due to culpable injury to life, body or health.
- 7.2 If TPNG is due to collect or else use addresses, TPNG does not guarantee that all collected or else used addresses are complete, up to date and correct. The address data or else the addressees' circumstances can change at any time. Therefore, TPNG can in particular not check whether an addressee or an address actually exists at the time of collection or use of the address data or whether it corresponds to the features assigned to the address (e.g. belonging to a target group).
- 7.3 The client has the right to commission a qualified person of his choice to review the legal permissibility of the services to be performed by TPNG at his own expense.

8 Change requests by the client

- 8.1 As long as it is technically possible and reasonable, TPNG will take change requests by the client regarding an individual contract into account subject to the following conditions:
- 8.2 TPNG will analyse change requests by the client regarding their feasibility, inform the client about the results of the analysis and provide them with an amendment agreement ("amendment offer") of the individual contract in question. Section 3 applies to the offer and the acceptance of the amendment offer accordingly.
- 8.3 If after the analysis of the feasibility of the change request TPNG come to the conclusion that a binding estimate of the feasibility or resulting effects and extra costs cannot be made without a further examination, TPNG can make an amendment offer subject to its feasibility or an offer for a further examination of the change request.
- 8.4 If no agreement is reached regarding a change request or a change offer, the individual contract in question will be carried out as originally agreed, if this is acceptable for the client.

9 Remuneration, delivery and payment

- 9.1 Invoices by TPNG are due within 14 days of the date of the invoice. All prices are net prices plus currently applicable VAT.

- 9.2 Items delivered on the occasion of services provided by TPNG remain their property until the entire settlement of all demands arising from the business relationship with the client.

10 Rights of use

- 10.1 Insofar as copyright or neighbouring rights, patent rights, design rights or utility model law, database rights or other property rights (“property rights”) exist or arise in the services or work results (including leads, address and target group data) provided by TPNG and unless the parties have agreed otherwise, TPNG shall grant the client the non-exclusive, non-transferable, non-sublicensable right of use of these property rights, limited to the contract purpose and the respective period of the individual contract upon conclusion of the particular individual contract and for the rest at the time that they arise and only insofar as is absolutely necessary for the provision of the agreed services insofar as is legally permissible. A further transfer or exclusive granting of rights of use with regard to property rights is not accepted unless the parties have agreed this explicitly in the individual contract.
- 10.2 Aforementioned granting of rights is subject to the suspensive condition of complete payment of the remuneration of the service relevant to the property right by the client to TPNG.
- 10.3 Unless agreed otherwise in the individual contract, the property and protective rights of leads and e-mail addresses, address lists, address files, illustrations, designs, plans, drafts, performance results, databases and comparable data generated by TPNG for the purpose of providing services are exclusively those of TPNG.

11 Liability

- 11.1 TPNG is liable for damages to the client, irrespective of their legal grounds, in accordance with legal regulations, if and insofar as the damages
- are caused by an intentional or grossly negligent violation of obligation by TPNG, a legal representative or one of TPNG’s agents,
 - are consequences of the absence of warranted characteristics,
 - are claims due to culpable injury to life, body or health
 - are product liability claims according to the German product liability law.
- 11.2 In the case of ordinary or simple negligence, TPNG are only liable for damages caused by the violation of contractual cardinal obligations. Contractual cardinal obligations are

obligations without which a proper performance of the contract is not possible and whose observance the contracting party can rely on regularly, and whose breach on the other side jeopardises the achievement of the purpose of the contract. This limitation of liability does not come into effect for damages caused by culpable injury to life, body or health or are the consequence of the absence of warranted characteristics.

- 11.3 Also in the case of a violation of a contractual cardinal obligation, liability – insofar as the damage is merely due to ordinary or simple negligence and does not affect body, life or health or insofar as it is the result of the absence of warranted characteristics – is limited to such damages that have to be typically expected within the scope of concluding such a contract.

12 Responsibility and release

- 12.1 TPNG do not check whether the material provided by the client for the provision of the services, such as, in particular, websites, definitions, advertising material, data, files, target group data etc. may be used for these services or whether they violate third-party rights. The client is solely responsible for the legal permissibility of the use of the customer material provided by him for the services, in particular with regard to copyright, competition law, trademark right, press law, regulations concerning the legal protection of minors, data protection law, telemedia act and criminal law.
- 12.2 TPNG reserve the right to not include evidently illegal customer material in their services.
- 12.3 The client shall hereby fully and on first demand indemnify TPNG from all third-party claims and appropriate costs of legal defence incurred by the use of customer material that is impermissible or encumbered with third-party rights. This also applies to contents of the customer material linked to the client's contents or connected to them in a similar way.
- 12.4 TPNG have the right but not the obligation to remove the pages and advertising materials created for or provided by the client in case of them being impermissible partially or completely from the network or alter them in such a way that they are permissible and do no longer violate third-party rights, and also to give demanded cease-and-desist declarations if TPNG find themselves obliged by a third party to cease and desist.

13 Confidentiality and self-advertising

- 13.1 Both parties are obliged to keep all industrial and commercial secrets and other confidential information (“confidential information”) concerning the other party made known to them within the scope of the cooperation and abstain from any commercial exploitation.
- 13.2 The duty of confidentiality remains valid after the period of cooperation.
- 13.3 The parties shall reveal knowledge of the respective other party and confidential information only to employees and independent contractors, only insofar as they require it to perform their duties.
- 13.4 The duty of confidentiality and non-exploitation of the confidential information no longer applies if and insofar as it
- was demonstrably known before the notification,
 - was known to the public or else the experts before the notification or was generally available,
 - will be known or generally available to the public or else the experts after the notification without participation or by fault of a contracting party,
 - essentially corresponds to information revealed and made available to a party at any time by an authorised third party in a legally permissible manner.
- 13.5 Notwithstanding the duty of confidentiality, TPNG have the right to name the client as a reference client in all possible manners of communication with third parties and thereby also use signs of the client. This does not apply insofar as the client claims a legitimate interest in the omission or TPNG needs to be aware of such. The parties agree not to disclose any details of the order. The parties shall come to an agreement with regard to further notifications concerning their cooperation.

14 Data security

- 14.1 The client is obliged to ensure that personal data, in particular e-mail addresses, contained in the customer material have been collected in accordance with applicable law and are allowed to be transmitted to TPNG for the purpose of the individual contract.
- 14.2 The client guarantees that for all personal data contained in the customer material he owns the explicit permission of the persons concerned for the intended use (e.g. the dispatch of e-mail advertisements).

14.3 The client indemnifies TPNG on first demand of all losses, damages and costs including prosecution costs resulting from a violation of data protection regulations caused by him, even insofar as costs have to be borne to withstand third-party attacks including the responsible regulatory authority.

15 Contract duration, termination and rescission of individual contracts

15.1 Insofar as TPNG provide services within the scope of a continuing obligation and nothing else has been agreed by individual contract, the individual contract is deemed to have been concluded for an undetermined period of time and can be properly terminated by both parties with a three-month period of notice to the end of the quarter. Notice of termination must be given in writing.

15.2 At all times, both parties have the right to extraordinary termination for good cause. A good cause shall be deemed to exist, in particular, when lists of owners of addresses (list owners) are fully booked and TPNG could not foresee this.

15.3 If TPNG terminates the contract for good cause, the client is obliged to reimburse TPNG for all costs and professional fees that have demonstrably arisen up to the time of the cancellation and to which the client had agreed. The client shall be released of any payment obligation after declaration of the termination. The services provided until then by TPNG shall be accounted for proportionally, unless the services provided by TPNG up to the time of the cancellation could not be used by the client.

15.4 Should TPNG terminate an individual contract extraordinarily for good cause, the client shall pay for and if necessary accept all third-party services commissioned by TPNG in the context of the provision of the services if TPNG are not able to cancel these commissions.

15.5 Should the client terminate the individual contract after the conclusion of the contract and prior to the fifth day before the agreed start of the provision of the service (e.g. advertising/Marketing campaign), he is obliged to pay TPNG 20 percent of the agreed remuneration as a cancellation fee and compensation for expenses, at least however the costs already resulted from the production of the advertising material, after receipt of an invoice.

15.6 Should the client cancel the individual contract after it has been concluded, but five days or less before the planned start of the service, he is obliged to pay TPNG 100 percent of the agreed remuneration as cancellation fee and compensation for expenses after receipt of an invoice.

- 15.7 In cases of cancellation according to Subsection 15.5, the client shall also pay for and accept all third-party services already commissioned by TPNG in the context of providing the services, unless TPNG can cancel these services. Insofar as third-party services can be cancelled by TPNG, the client shall in any case pay for all cancellation fees TPNG has to pay third parties due to respective cancellation.
- 15.8 Insofar as TPNG provide certain contents, capacities or data (in particular target group data etc. provided by TPNG) only for the contract period, the client shall not use these contents, capacities or data after the termination of the contract. In the event of a violation, the previous contractual remuneration for such services shall be charged.
- 15.9 Unless explicitly agreed otherwise or unless services were provided exclusively according to the client's specifications or the materials referred to hereinafter typically remain with the client in accordance with their intended purpose, the client will upon termination of the contract immediately hand over to TPNG or delete on demand by TPNG all documents and working materials and also copies of the aforementioned documents provided by TPNG.

16 Poaching

- 16.1 For the duration of the contract and for a period of 12 months thereafter the client shall abstain from making TPNG employees an employment or job offer or act on them in any other way to make them terminate their employment contract with TPNG, or to end it in any other way.
- 16.2 For each case of violation of the poaching restraint, the client shall pay TPNG a contractual penalty in the amount of half the gross annual salary of the employee concerned, at least, however, EUR 25.000. Further claims for damages remain unaffected by this.

17 Set-offs and retentions

- 17.1 The client may only set off against claims by TPNG with undisputed or legally determined claims.
- 17.2 The client may only assert retention rights due to undisputed or legally determined claims and only against obligations that arise from the same contractual relationship as these claims.

18 Final clauses

- 18.1 Amendments of and additions to these GTC and also of individual contracts must be made in writing in order to be legally effective.
- 18.2 The exclusive place of jurisdiction for all disputes between the parties directly or indirectly resulting from these GTC and also of individual contracts is Hamburg.
- 18.3 German law applies, with exclusion of the UN sales law.
- 18.4 If one or more of the regulations in these GTC shall be invalid or become invalid or unfeasible after conclusion of the contract, this will in no way affect the validity of the remaining terms. Invalid regulations shall be replaced with regulations that come as close as possible to the intended purpose of the invalid regulations. Aforementioned regulations shall apply in case the contract turns out to be incomplete.