

General Terms and Conditions of Business of eprofessional GmbH

Valid as from June 1, 2010

§1 Applicability

The General Terms and Conditions of Business of eprofessional GmbH set forth hereinafter apply on an exclusive basis to all present and future business relationships. Services and offers are provided exclusively on the basis of these General Terms and Conditions of Business. The General Terms and Conditions of Business apply even if eprofessional does not expressly state that such is the case. Terms and conditions that conflict with or vary from these General Terms and Conditions of Business are not recognized by eprofessional unless eprofessional expressly consents to the application thereof.

§2 General description of services

eprofessional is a service provider in the field of online marketing. eprofessional enables customers to advertise their products and services effectively and to the right target audience on the Internet and to measure the success of their advertising measures. To accomplish this, eprofessional uses means including sponsored links and index entries in search engines. The subject matter of the services provided is the agreed services, and not a particular economic or financial outcome.

§3 Definitions

§3.1 Sponsored links

“Sponsored links” are text entries placed for a fee on the search results pages of search engines and portals. The position each such text entry occupies within the sponsored links is generally determined by the amount of the bid that the advertising party makes for its entry in response to certain search queries. The frequency with which the text entry is shown (impression) is based on algorithms applied by the respective sponsored links provider, which runs ads in response to certain search queries made by Internet users, depending on the established cost per click, the click rate, and the daily budget. In the individual case, the algorithms applied by the sponsored links provider may also depend on further factors. eprofessional has no influence on these algorithms.

§3.2 Index

“Index” is the term given to search results obtained from a search engine’s database. The basis for this database is the websites on the Internet, which are autonomously collected and fed into the database by spider programs run by the search engines. The position of the index entries within the search results is determined based on algorithms applied by the search engines. These algorithms are not disclosed by the search engines and are subject to change. eprofessional has no influence on these algorithms.

§3.3 Analyzer

The “analyzer” is the analysis platform of eprofessional and can be accessed via the website of eprofessional (www.eprofessional.de). Customers are given access to the analyzer by means of a password-protected login and can retrieve various statistics (reports) within the area of the analyzer that is approved for customer access. The number and selection of reports available to the customer is determined according to the specific individual agreements in place between the customer and eprofessional.

§3.4 BidManager

eprofessional uses a bid management system, the eprofessional BidManager, to manage and optimize the sponsored links campaigns. Via the BidManager, bids are managed in connection with technical interfaces (APIs) to the channels. eprofessional cannot guarantee that individual APIs for the channels will always be available.

§3.5 Visit

A “visit” is understood as a billable click. A click is billable if, after clicking on a sponsored link or a search result within the index, the Internet user is taken to the website of the customer that was the subject of the advertising. In individual cases, the customer and eprofessional may agree upon a contractual provision that varies from the foregoing. A visit within the foregoing meaning corresponds to the visit depicted within the analyses (reports) provided to the customer within the analyzer. At the same time, eprofessional takes appropriate technical measures to ensure that only clicks made by Internet users who are natural persons as well as clicks made by Internet users who are natural persons outside of the customer and eprofessional are counted as billable clicks. For the sponsored links, all clicks billed by the sponsored links providers to eprofessional are considered visits.

§3.6 Transaction

“Transaction” is the term used for a successful case. A case is considered successful if the Internet user becomes active interactively on the customer’s website as stipulated under contract (examples: a purchase, placement of an order for a newsletter, filling out of a contact form, etc.). The manner in which the Internet user must become active in order for his or her actions to constitute a transaction is determined according to the specific agreement between the customer and eprofessional. Transactions are allocated to visits using cookies placed by the analyzer system.

§3.7 Immediate transaction

An “immediate transaction” is a transaction completed within 120 minutes after the visit. In individual cases, the customer and eprofessional may agree upon a contractual provision that varies from the foregoing.

§3.8 Post transaction

A “post transaction” is a transaction completed within a timeframe of between 120 minutes and 1 second and 30 days after the visit. In individual cases, the customer and eprofessional may agree upon a contractual provision that varies from the foregoing.

§3.9 Conversion

A “conversion” is the conversion of a visit into a transaction.

§3.10 Landmark

Insofar as it has been contractually agreed that the customer is able to use one or more “conversion” reports in the analyzer, or that eprofessional will be compensated or will optimize campaigns depending on the number of transactions, the customer is obligated to build landmarks into those pages of its website that are relevant to capturing transactions (order confirmation page, for instance). Without this landmark, it is impossible for eprofessional to measure the Internet user’s transactions. The landmark is an image link to an invisible image one pixel in size. When the order confirmation page is accessed, the invisible one-pixel image link is retrieved by the eprofessional server, and the order is recorded. If the required landmark is not built in by the customer or is improperly built in on the order confirmation page, with the result that CPO optimization cannot take place or cannot be completed, eprofessional is released from any obligation to that effect. If, in such a case, a fixed fee per purchase (order) or shopping cart value generated has been agreed upon,

this agreement shall cease to apply. If, in such a case, a transaction-related success component of the fee has been agreed upon, eprofessional shall receive, until such time as a functional landmark has been built in or the Parties have agreed upon a new billing model, a fee in the amount of 10% of the campaign budget utilized.

§4 Entry into agreements

§4.1

Offers made by eprofessional are non-binding and subject to change. Agreements between the customer and eprofessional are deemed to have been entered into agreement upon eprofessional's written acceptance of the customer's offer.

§4.2

Correspondence between eprofessional and the customer will preferably take place by e-mail, which is considered essentially equivalent to written communication.

§4.3

Declarations of acceptance and orders from customers must additionally be transmitted in written form, either by mail or by fax. Side agreements must also be set forth in written form. This also applies to any amendment, cancellation, or addendum to this stipulation requiring the written form. Deadlines are always understood to mean the date and time of receipt by the recipient of the communication. For e-mails, the date of sending is deemed the date of receipt unless there is evidence to the contrary.

§4.4

We reserve all rights to all offers and contractual documents insofar as such rights are not granted to others according to the spirit and purpose of the agreement in question or based on express agreements.

§5 Prices and payment terms

§5.1

The prices for the services utilized by the customer are as listed in the respective agreements. All sums are net sums, on which value-added tax is owed in addition insofar as required by law. As a basic principle, billing is performed monthly. Unless otherwise agreed, payments are due in full immediately, without any deductions.

§5.2

The visits from the index are managed via the analysis server of eprofessional and logged there. Billing for the visits supplied to the customer website is performed on the basis of reports showing the number of visits and/or transactions obtained via index entries. These billing data are checked and prepared on the basis of the analysis server's log files.

§5.3

eprofessional bills the customer for the media budget used in the sponsored links channels for each past month. The basis for the invoice is, as a basic principle, the clicks measured by the sponsored links channels and the costs actually billed therefore.

§5.4

For services that eprofessional performs at any location other than its business headquarters (currently in Hamburg), eprofessional will, in the case of billing by time spent, bill the customer separately for travel expenses, incidentals, and costs of overnight accommodations, if applicable. Travel by means of public transit or public modes of transportation and costs of overnight accommodations are billed according to the costs actually incurred, while travel by private passenger car and incidentals are billed according to the then-applicable maximum tax-deductible rates.

§5.5

The due dates for payments and when payment is deemed to be in default are determined pursuant to the provisions of §§284, 286 and 288 of the German Civil Code. If the customer falls in default of payment, eprofessional is entitled to charge interest at the rate of eight percentage points p.a. above the base interest rate stipulated in §247 German Civil Code as default interest. If eprofessional proves that it has sustained a greater loss or damage due to the customer's default, the sum of compensation charged will be higher.

§5.6

If eprofessional sets a cure period and such period elapses without the customer's compliance, eprofessional is entitled to terminate the agreement by way of extraordinary termination. eprofessional's claims to payment shall be unaffected by such action.

§5.7

The customer is entitled to offset claims of its own against claims of eprofessional only if and insofar as the customer's counterclaims have been established on a final, binding legal basis, are undisputed, or have been acknowledged by eprofessional. The provisions of §§387 et seq. German Civil Code apply. The customer is entitled to exercise a right to withhold payment only if and insofar as the customer's counterclaim is based on the same legal relationship.

§5.8

If eprofessional has fallen in default of performance, the customer must first grant eprofessional a cure period that is appropriate to the circumstances, during which eprofessional is to perform. eprofessional's liability is, in all cases, limited to the amount of damage or loss that is foreseeable and typical, except if the delay in performance is based on a breach of contract committed through wrongful intent or gross negligence and for which eprofessional, any of its statutory representatives, or any of its vicarious agents is responsible.

§6 Tracking

The measurement of visits and transactions on the customer's site and the analysis of other advertising materials (banners, etc.) takes place via the analysis infrastructure of eprofessional. The customer is free to measure visits and transactions itself, or to analyze other advertising materials itself, and to use these figures for its review of billing. If there is any discrepancy between the figures measured by eprofessional and those measured by the customer, the customer is required to notify eprofessional thereof in writing or by e-mail within two weeks after receipt of the invoice. If the customer fails to render such notice within the time limit, or if the discrepancy is below 5% of the click figures billed per calendar month, the analysis data of eprofessional shall be used as the basis for billing. In the case of a discrepancy of 5% or greater, each Party is obligated to provide the other with its full log data for the billing period within two weeks after the notice of the discrepancy has been rendered. If one Party fails to meet this obligation, the analysis data of the other Party shall be used as the basis for billing. If, after the analysis of the log data, there is still a discrepancy of 5% or

greater, and if no solution can be reached, either Party may commission an auditor to clarify the discrepancy. The costs of the commissioning of such auditor shall be borne by eprofessional if and insofar as the subsequent review shows a substantial difference of more than 5% between the actual figures and those measured by eprofessional within the billing period. If this is not the case, the customer shall bear the costs of the auditor.

§7 Customer's obligations of cooperation

The customer agrees to provide eprofessional with all information and data necessary for the performance of the agreement. eprofessional is unable to begin the performance of the agreement before it has received the necessary information from the customer.

If the customer fails to meet its obligations of cooperation, eprofessional is released from its obligation to perform. If eprofessional performs nonetheless, it will bill the customer for its work in accordance with the then-applicable price list.

§8 Liability for defects in quality

§8.1

If the products developed or provided by eprofessional, such as software, source codes, or databases, are defective or deficient because their suitability for the agreed use as per the contract does not apply to a more than merely insubstantial degree, eprofessional is liable for defects in quality and defects in title pursuant to the statutory provisions. For defects or deficiencies in the software that were already present at the time at which the software was provided to the customer, eprofessional is liable only if it is responsible for such defects or deficiencies.

§8.2

eprofessional warrants that its services can be used in accordance with the performance specifications in effect at the time at which the agreement is entered into, and that they substantially fulfill the functions described therein. If the performance of eprofessional does not correspond to the performance specifications, the customer agrees to notify eprofessional thereof in writing without delay after the time at which the defect or deficiency becomes apparent.

§8.3

eprofessional does not warrant that services of third parties, especially network services or other services provided by third parties, are always present without interruptions or errors, dependably, or securely. eprofessional therefore makes no warranty, in particular, that advertising materials (e.g., banners, sponsored links) not supplied via eprofessional servers will be supplied without errors or interruptions.

§8.4

The frequency with which advertising materials that have been booked (e.g., banners, sponsored links) are shown is based on software algorithms applied by the providers, on which eprofessional has no influence. eprofessional therefore cannot guarantee that the advertising materials will appear at a specific time, or that a specific number of visitors will reach the customer's page.

§8.5

eprofessional guarantees 99% annual availability for its analysis server. If the annual availability is below 99%, and if, as a result thereof, fewer visitors are taken to the customer's site or fewer advertising materials are supplied than calculated by the respective providers, the customer will be billed only for the visits actually forwarded or the advertising materials actually supplied, as the case

may be. No further liability is accepted for any damage or loss sustained by the customer as a result of the lack.

§8.6

Except for the customer representatives who are authorized to sign and have been designated by eprofessional for the specific customer, employees of eprofessional cannot enter into any agreements that vary from the performance specifications and rates or from these General Terms and Conditions of Business, and in particular are not authorized to provide any representations or warranties.

§9 Liability

§9.1

eprofessional is liable without limitation insofar as the customer asserts claims for damages based on wrongful intent or gross negligence, in the case of malicious concealment of defects or deficiencies, and in cases of culpable loss of life, bodily injury, or impairment of health.

§9.2

In other cases of ordinary negligence, eprofessional is liable only if and insofar as an obligation has been violated and compliance with that obligation is of particular importance to the achievement of the purpose of the contract (cardinal obligation). In such a case, eprofessional's liability is limited to the amount of damage or loss that is foreseeable and typical.

§9.3

eprofessional is not responsible for the content that the customer provides to eprofessional. The customer assures eprofessional that the customer has been granted the license or rights of use thereto, particularly with regard to brand names of products to be advertised, by the respective holders thereof. The same applies to the use of domain names. eprofessional is not obligated to review the content provided by the customer for potential violations of copyright or other intellectual property rights or violations of fair competition. The customer will indemnify and hold harmless eprofessional from any and all liability vis-à-vis third parties and agrees to compensate eprofessional for damage and/or losses sustained by eprofessional as a result of claims asserted against eprofessional by third parties with regard to possible infringements. eprofessional assumes no liability for any damage or losses whatsoever arising from events of force majeure, particularly power outages, network and server errors, or viruses. The other Party is responsible for checking all data that are transmitted or sent. The customer is also obligated to back up the data in full.

§10 Force majeure

§10.1

With the exception of fulfillment of payment obligations, neither Party is liable for non-performance or for default in meeting performance obligations under the agreement if and insofar as the non-performance or default is based on circumstances that lie outside of that Party's control. Such circumstances include, in particular, events of force majeure in the form of natural events or an outage affecting the general power supply or the general telecommunications network.

§10.2

If one Party is unable to perform as owed due to force majeure, that Party is released from its performance obligations for the period for which such circumstance persists. The other Party is released from its obligation to render consideration for the same period.

§11. Intellectual property and related rights

§11.1

All copyrights and other intellectual or industrial property rights to services that are developed or provided under this Agreement, particularly to software, including source codes, databases, hardware, or other material, such as analyses, developments, documentation, and reports, as well as to the materials used to prepare such services, shall remain vested exclusively in eprofessional or its licensors. The customer shall receive only the right to use such materials and the authorizations that have been expressly granted pursuant to these General Terms and Conditions of Business, other general terms and conditions, under contract or otherwise.

§11.2

eprofessional expressly reserves all rights to publication, reproduction, editing, and exploitation of the data obtained with the eprofessional software, the content of the database, and to the software supplied therewith and the documentation.

§11.3

The customer is entitled to use the data and analyses obtained with the eprofessional software for its own use only. This includes the right to save analysis results for its own follow-up work. Any further use thereof is subject to a written agreement between the Parties. These obligations shall survive termination of the agreement.

§12 Term of agreement; termination

The term of each agreement is stipulated in the agreement. The right to termination for good cause is unaffected. After the termination of the agreement, eprofessional has the right to discontinue the forwarding of visitors from the search engine entries generated by eprofessional or from other advertising materials without delay.

§13. Assignment

Neither Party is entitled to assign its claims under the agreement either in whole or in part except with the other Party's prior written consent, which the other Party is not permitted to withhold or delay except for objectively justified reasons.

§ 14 Published content; customer's obligations

§ 14.1

eprofessional reserves the right to refuse orders or refuse to utilize search terms for the promotion if they are obviously illegal or violate good "Netiquette" or the guidelines established by the search engines and the sponsored links providers. eprofessional does not, however, perform any legal review of its own with regard to the terms or the content on the customer's pages. If a claim is

asserted against eprofessional due to a potential violation of the above, the customer shall indemnify and hold harmless eprofessional in full upon first request.

§14.2

eprofessional is entitled to place campaigns with the sponsored links providers offline without delay if cease-and-desist claims of third parties are asserted within the scope of a warning notice with a cease-and-desist declaration or declaration of obligation to cease and desist and/or a preliminary injunction. This can apply to the entirety of all offerings advertised by the customer if and insofar as the problematic offering in question cannot be kept within limits without a doubt. The customer is required to furnish proof that the content is in fact unobjectionable. As soon as such proof is furnished, the offering in question will be released again without delay.

§15 Confidentiality, data protection

§15.1

The customer agrees to maintain confidentiality regarding all business or trade secrets or confidential information that is provided to the customer by eprofessional or by any person acting on behalf of eprofessional or to which the customer otherwise becomes privy, provided that such information is not public knowledge.

§15.2

eprofessional saves and uses personal information only if and insofar as necessary for the handling of the contractual relationships between customers and eprofessional. The data that eprofessional collects, saves, and uses for other purposes within the scope of the agreement is not personal data.

§15.3

eprofessional guarantees that the personal data communicated to it will be treated confidentially in accordance with the statutory requirements. This obligation will survive termination of the agreement.

§15.4

eprofessional is permitted to analyze the non-personal data obtained in the course of performance of the agreement and to prepare such data for statistical purposes. In particular, eprofessional is permitted to summarize this data on an industry-specific basis and across industries and to provide it to third parties in this aggregated form. eprofessional will not disclose non-aggregated data.

§15.5

eprofessional expressly advises the customer that according to the current state of the art, it is not possible to guarantee comprehensive data protection for data transmitted via public networks such as the Internet.

§15.6

The customer itself shall take full care to ensure the security of the data transmitted by it via the Internet and the data saved by it on its Web servers.

§16 Miscellaneous provisions

§16.1

Unless otherwise agreed, the place of performance shall be exclusively the location in which eprofessional has its registered office.

§16.2

The place of jurisdiction for all obligations arising out of and in connection with the contractual relationship is the location of the registered business offices, or, at eprofessional's option, the location in which the other party has its registered office.

§16.3

The law of the Federal Republic of Germany shall apply to all rights and obligations arising out of and in connection with the contractual relationship, on an exclusive basis and regardless of any choice-of-laws provisions, and to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG), dated April 11, 1980.

§16.4.

Should any provision of these General Terms and Conditions of Business or in the context of other agreements between us and the customer be or become invalid, the validity of all other provisions or agreements shall be unaffected by such circumstance.