

tracdelight

General Terms and Conditions

The following terms of conditions apply to the use of the platform tracdelight.io respectively tracdelight.com (hereinafter „Platform“), operated by tracdelight GmbH (hereinafter „tracdelight“), and to market online advertising between Publishers and Advertisers (hereinafter collectively „Users“).

The general terms (see section A.) apply to all users, the special conditions for advertisers (see section B.) and publishers (see section C.) only to advertisers respectively to publishers.

A. General Conditions

A.1 Scope of Application

The following terms of contract apply to all license agreements. It is applied to all future business relations, even if it is not explicitly agreed anew. By registering to use this platform the terms of contract are agreed to. User's terms, deviating from the agreement, are invalid and do not apply, unless specifically accepted by tracdelight in written form. Acknowledgements of the User, referring to their terms and conditions are hereby rejected.

A.2 Definitions

In these Terms of Condition, as in all additional contracts between the user and tracdelight, the following definitions are to be taken as a basis.

Advertiser is a provider of products and services, promoting his supplies via advertising means provided by the advertiser.

Publisher provides advertising space and promotes the advertisers' products and services on his website.

Consumers are corporate clients and natural persons, purchasing wares and services or using other supplies in the internet.

Account is the legitimate access to the platform following the user's registration with their complete information, correct in substance.

Hyperlink (hereinafter also link): A reference to a website with internet offers, provided for potential visitors.

Valid click: a click is valid when the consumer, deliberately and of one's own accord, clicks a link on the publisher's platform in order to open the linked website of an advertiser. Repeated or consecutive clicks (determined by the respective advertiser) within a short period of time by the same visitor – also on different hyperlinks – are invalid. Valid clicks are recorded and verified by tracdelight and determined in its own discretion.

Valid Lead: a lead is valid when a consumer performs a valid click and subsequently carries out a defined action (qualified action) on the advertiser's website deliberately and of one's own accord.

Valid Sale: A sale is valid when a consumer performs a valid click and subsequently purchases wares against payment or utilizes services against payment on the advertiser's website deliberately and of one's own accord.

tracdelight

A.3 Participation on the Platform

1. The registration in itself is free of charge. It is ensued by opening a user account consenting to these Terms and Conditions. In consequence of a registration and confirmation by tracdelight, a license agreement for using the platform (hereinafter user contract) between tracdelight and the user comes into force.
2. The registration is solely permitted to juristic persons and unrestricted, natural persons of legal capacity.
3. The information requested by tracdelight at registering is to be completed fully and correctly. The registration of a juristic person can only be performed by a natural person authorized to represent and mentioned by name. Should a change in the information given occur after registering, the user is obliged to immediately correct this information on the user account via tracdelight.
4. When registering the user specifies a valid email address and a password. The user must keep the password to themselves. tracdelight will not communicate the password to third parties.
5. An account is not assignable to another person or party.
6. tracdelight reserves the right to suspend the account after 6 months if the registration has not been completed correctly.

A.4 Subject-matter and Conclusion of the Contract

1. Should tracdelight conclude a separate contract with the users, it is including these Terms and Conditions.
2. tracdelight offers the advertising space provided by the publishers to the participating advertisers and vice versa.

A.5 Account und Duration of Contract

1. The user accounts for the tracdelight platform are granted indefinitely.
2. The contract between tracdelight and the users for the delivery of the following service is concluded for the duration of the running calendar month. It will be extended for the duration of another calendar month unless either party provides notice to the other of its intent to terminate this contract not less than one month before the end of the current term. Should a cancellation of contract occur, tracdelight will subsequently deactivate the existing accounts.
3. A cancellation of contract according to these regulations is to be stated to advertiser-support@tracdelight.com in text form or via E-Mail.

A.6 Deactivation of the Account and Termination

1. tracdelight is entitled to cancel a contract and to deactivate the account of the respective user by giving notice of one month in advance to the end of the calendar month.
2. Furthermore, tracdelight can take the following measures, if concrete indications are given that a user infringes on legal regulations, third-party rights, these Terms and Conditions, in particular A.7, B.1.4, B.2.3, B.2.5, C.2.2, C.2.3, C.3.1 and C.3.3 or if tracdelight has another legitimate interest, in particular as a means of protecting other users from fraudulent activities:
 - Issuing cautions to user
 - Restrictions to the use of the platform
 - Temporary suspension
 - Final suspension
3. When deciding on the measure to be taken, tracdelight considers the legitimate interests of the user concerned, in particular if there is any indication that the user is not responsible for the infringement.

tracdelight

4. Rights for dismissal for exceptional reasons beyond these are expressly reserved by tracdelight and the users. tracdelight is entitled to cancel the contract for exceptional reasons and to deactivate the account without the one day notice in case there is any indication of serious or permanent infringement of these Terms of Conditions by the user, in particular the obligations according to A.7 of these Terms and Conditions.

A.7 Manipulation

1. The willful attempt to manipulate the statistics, and thus the amount to be paid out, will be charged with a penalty in the amount of € 500 for every attempt ascertained. The same applies in case a user takes part in the program anew under a false name after having been excluded due to repudiatory breach of contract.
2. Any claim for damages shall remain unaffected by the contractual penalty.
3. The penalty is to be paid to a public utility institution determined by tracdelight.
4. Every attempt to bypass, manipulate or influence the system, technology, script, codes, mechanism and principles of billing set by tracdelight in any other way, is prohibited and can result in a charge against the initiator for fraud or attempted fraud.

A.8 Termination of Contract

1. At deactivation of the account a final invoice is issued.
2. A user whose account has been deactivated due to repudiatory breach of contract is not eligible to register for use of the platform anew. Additionally, violation of this regulation obliges the user to pay damages to tracdelight.

A.9 Liability

1. tracdelight provides its services, system, technology and solutions in all conscience and within the scope of its technical possibilities. The actuality, accuracy, totality or quality of the information provided, by tracdelight, as well as a faultless and uninterrupted use of the services, system, technology or solutions is not warranted.
2. Apart from infringement of essential contractual commitment, tracdelight is liable to corporate clients for damages only if intent or gross negligence can be held against tracdelight, legal representatives or executive employees. For other performing agents tracdelight is only liable for intent and in case they have infringed on the essential contractual obligations with intent or gross negligence. Except for intent or gross negligence by legal representatives, executive employees or willful conduct of other performing agents, tracdelight is not liable for the compensation of indirect damages, in particular for lost profit. Except for intent or gross negligence by tracdelight, legal representatives or executive employees, liability is limited to the foreseeable damage typical to conclusion of contract.
3. tracdelight is only liable to private persons in case of intent or gross negligence. In case of responsibility of tracdelight for infringement of essential contractual obligations, debtor's delay or impossibility of service provisions, tracdelight is only liable for culpable conduct of its employees, and performing agents. Except for intent and/or gross negligence by legal representatives, employees and other performing agents, tracdelight's liability is limited to the foreseeable damage typical to the conclusion of contract.
4. The above mentioned disclaimers of liability and restrictions towards corporate clients or users do not apply to acceptance of explicit guarantees through tracdelight, and for injury of life, body and health, as well as in case of obligatory legal regulations.

tracdelight

B. Special Provisions for Advertisers

B.1 Advertiser-Account

1. tracdelight sets up and manages accounts to carry out the commissions.
2. Advertisers can start advertising campaigns after their registration.
3. The advertiser is obliged to adapt the relevant website for the respective programmes in such a way (e.g. by implementing a code transmitted by tracdelight), so that tracdelight can carry out the necessary data collection for a remuneration. This code may not be changed without the prior written consent of tracdelight. For changes to the code implementation without such consent, tracdelight reserves the right to invoice thereby incurred costs in the amount of € 500.00 plus valid VAT for adjustments to the platform. The proof of a lower damage is possible.
4. The advertiser pays tracdelight a performance-based remuneration when it comes to a successful deal (valid sale, click or lead) for the publishers. If the automatic recording of these deals is no longer or incorrectly made due to changes to the advertiser's website (such as changes to the code implementation, B.1.3), the parties agree to draw on a reasonable remuneration on a cost-per-click (CPC) basis for such periods. In the context of this recourse, the parties agree on a one-sided pricing right of tracdelight within the scope of a CPC of € 0.30 - 0.40 plus valid VAT. tracdelight detects incorrect implementations by the fact that a click of a user is detected on the platform, the advertiser's website, however, does not reconfirm this click via the code implementation to the platform.
5. tracdelight determines the respective remuneration for an advertising campaign in advance at its own discretion after consultation with the respective advertiser.
6. The platform's technology thereby creates the statistics necessary for a correct remuneration and makes these available to the advertiser within the account. These statistics alone represent the basis for the respective remuneration of the advertising campaigns. This also applies to the processing periods of any leads and sales.
7. The advertiser is obliged to check sales and leads for their validity. He therefore has the possibility on the platform to give the respective approvals. If he does not do so within 60 days after logging the respective sales or leads, tracdelight can request the advertiser to do so. After expiration of a further period of 2 weeks, all aforementioned sales and leads are considered valid. tracdelight will notify advertisers of current deadlines and legal consequences.
8. The advertiser receives a monthly invoice from tracdelight for the amounts confirmed in the billing period. The advertiser can view valid sales, clicks and leads in his customer area under Management, Credit.
9. tracdelight's invoices are payable in full within 10 days of receipt of the invoice without deduction of discount.

B.2 Provision of advertising media

1. The advertiser shall provide tracdelight the advertising media to be used by the publishers via a "Product Data Feed" according to the technical specifications of tracdelight.
2. The advertiser will provide sufficient information to identify the advertisement (e.g., provider information) in order to comply with any statutory information obligations (e.g., German UWG, German PreisAngVO, etc.).
3. The advertiser agrees that the publisher receives access to his advertising media and the information associated with the advertising media, including design, destination URL, evaluations and other data via the Platform.
4. The question of an advertising medium design as well as the destination URL of an advertising medium, including its accessibility, is the sole responsibility of the advertiser. tracdelight is entitled

tracdelight

to reject advertising media of the advertiser without giving any reason and to adapt it to any technical requirements.

5. The advertiser warrants that the advertising media provided by him as well as the linked landing page do neither violate applicable law nor impair or violate the rights of third parties of any kind whatsoever.
6. The advertiser indemnifies tracdelight against any claims of third parties in connection with violations of law in accordance with no 3 and no 5 and undertakes to compensate tracdelight for all disadvantages and damages arising in this context, including the costs of legal prosecution or legal defence in an appropriate scope.

B.3 Granting of rights

1. The advertiser grants tracdelight and the publisher respectively accepted in accordance with A.4 a simple, non-exclusive, non-transferable, worldwide right of use temporally limited to the term of the contract and limited in terms of content to the purpose of the contract.
2. The aforementioned granting of rights also includes the right to store, reproduce, publish, digitise and process the advertising medium, insofar as this is necessary for the implementation of the contract. In addition, this granting of rights applies to the use of fixed and mobile communication networks and tools, including all digital and analogue transmission and retrieval techniques, in particular via cable, radio, fixed and mobile networks, all known and future transmission methods and including any receiving devices.

B.4 Placement of advertising media

1. tracdelight supports the connection between advertisers and publishers on the platform. However, tracdelight assumes no responsibility for the starting time of an advertising campaign, the frequency and any campaign success.
2. The question of a respective placement / positioning of provided advertising media is solely at the discretion of tracdelight and the affiliated publisher.

C. Special Provisions for Publishers

C.1 Publisher-Account

1. tracdelight sets up and manages accounts to carry out the commissions.
2. Publishers are compensated from the advertising success achieved through tracdelight. Data collection required for the calculation of advertising success and the associated remuneration is carried out exclusively by tracdelight. Since the remuneration depends on various factors (see number B.1.5), it is variable and will be adjusted continuously with effect for the future.
3. The advertiser pays a commission, minus the respectively determined percentage for tracdelight, which is due to the respective publisher. The amount of the success-related commission, which the publisher receives from tracdelight, can be accessed by the publisher on the platform at any time. A claim of remunerating advertising activity costs, above this success-related commission is precluded.
4. The publisher's claim of the success-related commission from tracdelight, accrues and will only be payable when all following requirements are fulfilled
 - Successful business transaction (valid sale, click, lead)
 - Recording of business transaction via tracdelight
 - Acceptance of goods by end customer
 - Expiration of legal cancellation period
 - Complete payment by end customer

tracdelight

- No misuse in terms of A.7 of these General Terms and Conditions
 - Confirmation of business transaction through the adviser
5. Payments of remuneration to publishers are made within the account on the 20th of each month, in case of a proper billing address, from a net account balance of 25 euros and if the participant supplied his full name, company name, tax number/tax ID, full address and bank details.
 6. The publisher expresses consent for a billing via credit memo procedure, resulting in a monthly credit issued by tracdelight, as soon as an adequate to be paid out has been attained.
 7. The transfer of the respective remuneration to the publisher ensues based on the statistics generated via the platform. These are made available within the account.

C.2 Registration of Websites

1. The internet offers registered by the publisher, as well as the content, must comply with the existing legal regulation at all times.
2. A publisher may only register internet offers which are registered to him. Should a registration via third parties occur, tracdelight may demand respective credentials.
3. Publisher may only register websites whose contents do not infringe on the applicable law. tracdelight may examine websites registered by the publisher for illegitimate contents with the aid of technical means. Should a publisher's website contain illegitimate or even penologic content, the concerning website, as well as the publisher concerned, will be precluded from program participation immediately and the publisher account will be suspended. Publishers explicitly warrant that the registered websites absolutely do not include any pornographic, violent, anticonstitutional or illegitimate content.

C.3 Application of Advertising Media

1. The publisher may not change the provided advertising media and codes without explicit approval by tracdelight. Any such changes without approval, entitles tracdelight to perform termination with immediate effect with simultaneous retention of possible credits.
2. To ensure correct statistics, as well as the related billing, the publisher is obligated to technically integrate the respective advertising media correctly. Publishers are responsible for the correct integration. For advertising media, incorrectly integrated, any claim on remuneration is inapplicable. Any liability on the part of tracdelight, as well as the advertisers for possible disadvantages, which publishers might incur due to incorrectly integrated advertising media is explicitly precluded.
3. It is also disallowed to enlist users of the publisher website to partake in the proceeds from an advertising media placement by prompting them to click on the advertising media.
4. For commissions attained through the abovementioned violations, any claim on disbursement is precluded, and tracdelight is entitled to exclude the respective publisher and, if necessary, demand compensation from the publisher, amounting to double the revenue attained through any violation, when tracdelight is aware of such a case. The publisher is entitled to prove evidence of less damage than it has been numbered by the advertiser and/or tracdelight.

C.4 Responsibility for Publisher Websites and Identification

1. Publishers are solely responsible for their websites, including all content, as well as maintenance and operation. They are also solely responsible for the according execution of all technical standards, in particular the observance of the regulations defined here as well as on the platform.
2. In addition, the publisher is obliged to adequately label the advertisement in accordance with the law. This applies, among other things, but not exclusively, to the labelling of the advertisement itself, and, where applicable, the advertiser's provider identification if it is required.

tracdelight

3. The publisher releases tracdelight from any claims by third parties in connection with infringements within the scope of the above-mentioned obligation and undertakes to replace tracdelight all disadvantages and damages arising in this context, including the costs of legal prosecution or defence in an appropriate scope.

C.5 Warranty for Advertising

tracdelight does neither assume an explicit nor an implied warranty concerning the advertising media, wares or services provided by the advertiser and explicitly rejects any warranty for minimum quality, or a minimum efficiency for a certain purpose. This is also applicable for any requirements for a non-infringement of rights of third parties.

D. Final Provisions

1. This contract is subject to German law.
2. Exclusive place of jurisdiction for all disputes arising out of or in connection with this contract is Munich, insofar as the parties to the dispute are merchants, corporate bodies under public law or special funds under public law.
3. This contract does not create a company with an external effect in legal relations and no employment, agent, commission or job relationship and thus does not authorise either of the parties to make legally binding declarations for both parties or for another party or to otherwise oblige or represent it.
4. Should individual provisions be or become ineffective or unenforceable and/or contradict the statutory provisions, the validity of the remaining provisions shall not be affected. With respect to the ineffective or unenforceable provision, the parties agree that they negotiate an effective and enforceable provision that comes as close as possible to the purpose of the invalid provision. In the case of regulatory gaps, the provision which comes closest to the intention available at the time of conclusion of the contract shall be deemed agreed. Incidentally, the contract remains unaffected by the regulatory gap.
5. tracdelight is entitled to change or amend these General Terms and Conditions at all times. The user has the right to object to such change. Should a user not object to the regulations changed within a period of 6 weeks after receiving the notification of change, the respective announcements come into effect. tracdelight adverts the user in written form or via email, at the beginning of the respite, that the notification of change will be counted as accepted, if the user does not object within 6 weeks.

Latest update Mai 2019