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## **GENERAL TERMS AND CONDITIONS OF COOPER ADVERTISING GMBH: ADDRESS SUBLEASING AND EMAIL MARKETING**

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**MANAGING DIRECTOR:** OLIVER WYDWALDT

**LOCATIONS**  
HAMBURG - FRANKFURT - PARIS - MILAN - ALICANTE - VALENCIA

FACEBOOK: COOPERADVERTISING XING: COOPERADVERTISING  
INSTAGRAM: COOPERADVERTISING LINKEDIN: COOPERADVERTISING

HAMBURG DISTRICT COURT: HRB 142078

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## 1. SCOPE OF APPLICATION

**1.1.** The following General Terms and Conditions (GTCs) are part of all contracts executed with

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for the purpose of supplying addresses and subleasing addresses (“Leads” or “Addresses”) that Cooper Advertising GmbH (“Cooper”) leases from address owners (“Lessor”) and subleases to address users (“Customer”), as well as for the purpose of providing services to the Customer in the context of email marketing.

**1.2.** Terms and Conditions of the Customer that conflict with or differ from the terms set out below do not apply, even in cases where Cooper does not separately object to their application. The only exception applies where Cooper agrees to the application of conflicting or different terms in writing. The GTCs even apply exclusively in cases where Cooper, being aware of any terms of the other party to the contract that conflict with or differ from the Terms and Conditions set out below, provides the service without any reservation.

**1.3.** The following framework conditions only apply in interactions with entrepreneurs, as defined in Section 14 of the German Civil Code (BGB).

## 2. CONTRACT FORMATION

**2.1.** Cooper’s offers are subject to change and are only made when Cooper provides a written order confirmation.

**2.2.** Deadlines for providing the service are only binding for Cooper if they are expressly designated as such.

## 3. REMUNERATION

**3.1.** The prices that are individually agreed and confirmed in writing apply. Where no prices were agreed, Cooper’s current list prices apply.

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**3.2.** Where the prices agreed are based on Cooper's list prices and the contractually agreed service shall only be provided more than four months after the formation of the contract, the list prices in effect at the time when the contractually agreed service is provided apply (in each case less any discount (fixed or percentage) agreed).

**3.3.** All prices are exclusive of the applicable statutory VAT.

**3.4.** Unless otherwise agreed, payments are due immediately upon delivery or performance and invoicing, without any early payment discounts or other deductions. In the event of a delay in payment of more than four weeks, all discounts or early payment discounts that were granted or other agreements relating to a reduction of the remuneration cease to apply. In this case, the original price calculated without granting any discounts or early payment discounts and/or any other agreements relating to a reduction of the remuneration shall be deemed agreed. In addition, in cases where payment is delayed by more than four weeks, Cooper has the right to suspend its performance of the service for the Customer, including its performance owed under other contracts.

**3.5.** Cooper has the right to only perform or provide outstanding deliveries or services against prepayment or the provision of collateral in cases where circumstances that will likely significantly reduce the Customer's credit rating and jeopardise payment of Cooper's outstanding claims by the Customer under the relevant contract become known after the formation of the contract.

## **4. SET-OFF, RETENTION AND ASSIGNMENT**

**4.1.** The Customer may only offset its claims against our claims where its claims have become res judicata or are undisputed; a right of retention may only be asserted on the basis of claims that are based on the same contract.

**4.2.** The Customer may only assign its claims and rights under the contract to third parties with Cooper's written consent.

## **5. FACTORING**

**5.1.** Cooper has the right to assign claims from the business relationship to other parties.

**5.2.** Cooper's claims from leasing against the Customer may, as applicable, be assigned to Eurofactor GmbH, Bajuwarenring 3, 82041 Oberhaching / Munich.

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## **6. WARRANTY**

**6.1.** As a general rule, Cooper's employees are not authorised to make any commitments concerning the scope of performance or other facts pertaining to the services to be provided, and therefore are unable to make any representations with respect to their quality. Derogations from this general rule only apply where such representations are confirmed in writing by Cooper's management.

**6.2.** Cooper has the right to only provide any subsequent performance owed by it if the Customer pays the remuneration that is due. However, the Customer is entitled to retain that part of the remuneration that is proportionate for the asserted defect in cases where Cooper has a warranty obligation.

**6.3.** Claims for defects become time-barred after a period of 12 months from the date of performance or, in cases requiring the Customer's acceptance, 12 months from the date of Customer's acceptance. However, claims for damages always become time-barred within the periods provided for by law.

## **7. LIABILITY**

**7.1.** Cooper is liable without limitation for claims for damages that are due to intent or gross negligence, including intent or gross negligence of representatives or vicarious agents.

**7.2.** For a breach due to slight negligence of a material contractual duty, the fulfilment of which is a prerequisite for the proper performance of the contract, the breach of which jeopardises the fulfilment of the purpose of the contract, and on compliance with which the other party to a contract may regularly rely, Cooper's liability is limited to compensation for the foreseeable damage typically incurred. Any liability beyond this limitation is excluded.

**7.3.** This does not affect liability for a culpably caused injury to life, limb or health or liability under the German Product Liability Act or liability for guarantees. In the legal sense, "guarantees" only refers to those expressly designated as such.

**7.4.** Claims based on liability for damage that is not due to an injury to life, limb or health and for which slight negligence is not excluded become time-barred within one year as of the accrual of the claim.

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## **8. SPECIAL TERMS FOR ADDRESS SUBLEASING**

### **8.1. SUBJECT MATTER OF THE AGREEMENT AND FORMATION OF THE CONTRACT**

**8.1.1.** Cooper leases data (“Leads” or “Addresses”) from the address owner (“Lessor”) for the purpose of supplying addresses and subleasing them. The data is subleased to address users (“Customers”) in Cooper’s own name and commercial interest.

**8.1.2.** The contract for the supply of addresses (“Address Lease Contract”) is exclusively formed between Cooper as the intermediate lessor and the Customer as the final lessee. There is no direct contractual relationship between the Customer and Lessor.

**8.1.3.** Where certain information (advertising material, processor, etc.) is not yet available to Cooper when the order is confirmed, Cooper may provide the order confirmation to the Customer subject to conditions precedent.

**8.1.4.** By approving a test for advertising material presented, the Lessor, as the address owner, waives its right of refusal for the same promotion in time by the Customer using the entire address pool inventory unless the circumstances change after such approval (changes with respect to whether the advertising is permitted by law, changes with respect to the authorisation to use the addresses).

**8.1.5.** Cooper, as the intermediate lessor, does not assume any liability vis-à-vis the Customer, as the address user, for the legal permissibility of the intended use of the addresses (in particular under competition law). The Customer is solely responsible for this and shall indemnify the Lessor and Cooper against any claims brought by third parties in this respect.

**8.1.6.** The subleased addresses shall be supplied to the Customer directly by the Lessor on behalf of Cooper using the interface agreed in the order.

### **8.2. REMUNERATION**

**8.2.1.** Unless otherwise agreed, prices are net prices exclusive of the applicable statutory VAT, with each group of addresses being charged separately. The address quantities specified in the offers and price lists are only approximations in light of regular changes in inventory due to additions and disposals. Consequently, as is customary in the industry, in all orders the relevant address quantity shall be deemed ordered as including a maximum deviation of up to 5%, with the price to be paid changing depending on the greater or lower quantity supplied unless Cooper or the address user cannot reasonably be expected to accept a specific deviation in an individual case.

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**8.2.2.** Additional costs, such as the cost of selections or data transfers, are charged separately.

**8.2.3.** Where the Customer is in default of payment with respect to more than one payment obligation, all claims Cooper has against the address user become due immediately.

### **8.3. LIABILITY**

**8.3.1.** Cooper is not liable to Customers, as address users, for the accuracy of the information and representations provided by Lessor. In this respect, Cooper assigns its claims against the Lessor to the Customer; the Customer accepts the assignment.

**8.3.2.** The Customer is solely responsible for reviewing the address use with respect to its compliance with competition and data protection law. Cooper, as the intermediate lessor, does not assume any liability for the legal permissibility of the intended address use by the Customer, as the address user.

**8.3.3.** The aforementioned disclaimers for the benefit of Cooper do not apply in cases of intent or negligence where the breach of a material contractual duty or an injury to life, limb or health is concerned. The same applies to the liability of Cooper's vicarious agents.

### **8.4. RIGHT TO USE, CONTROL**

**8.4.1.** Unless otherwise agreed, the lease contract between Cooper and the Customer entitles the Customer, as the address user, only to a single use of the addresses provided by the Lessor upon payment of the rent and granting of the release.

**8.4.2.** Unless otherwise agreed, the Customer is only entitled to perform the services set out below on the addresses (or have them performed by third parties):

- Data conversion/analysis, supplementation, qualification;
- Data screening, such as Infoscore, Protector;
- Removal of duplicate records;
- Splitting into subsets and reduction.

**8.4.3.** Any additional services provided to the Customer by third parties, such as optimisation analyses, history files, storage for order entry, or storage of temporary files for a period of three months beyond the last data delivery or forwarding to other service providers, require Cooper's written approval.

**8.4.4.** The Customer shall abstain from storing, altering or transmitting the subject data outside of the authorisation agreed in the contract, in particular from transmitting the data to third parties for any use that was not approved. In addition, the Customer shall comply with

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special requirements and individually agreed restrictions (e.g. with regard to the advertising material approved).

**8.4.5.** Further processing of data storage media, or the addresses, may only be carried out at the data centres approved by Cooper in advance. These companies must be qualified for the processing of personal data in accordance with the provisions of the German Federal Data Protection Act (BDSG) and the EU General Data Protection Regulation and must be selected accordingly. Any subcontracting by the aforementioned service providers must be presented to Cooper in writing upon request and requires Cooper's prior written consent. In each case, a data processing agreement, as defined in Art. 28 GDPR, must be in place for each contracted service provider and must be provided to Cooper within five working days upon request.

**8.4.6.** The Customer agrees that the Lessor may include a maximum of 50 control addresses per address group in each address delivery regardless of the address quantity in order to be able to monitor whether the addresses supplied were used in a manner that was not authorised.

**8.4.7.** The Customer must not have the addresses delivered to companies contracted to process its mailings without informing them about the existence of control addresses and the need to comply with the aforementioned restrictions on use. The Customer is liable to Cooper for each violation by the companies contracted by it.

## **8.5. PROMISE CONCERNING A CONTRACTUAL PENALTY**

**8.5.1.** The Customer undertakes to pay Cooper a contractual penalty for each violation of the restrictions on the scope of use in the amount of 10 times the agreed rent based on the supplied gross quantity of the group created for the delivery which also contained the addresses that were used in violation of the contract. The Customer is also liable for the fault of its employees (Section 278 of the German Civil Code (BGB)) and other parties involved in the performance of the contract. Cooper reserves the right to assert additional claims for damages.

**8.5.2.** To prove that a violation occurred, it is only necessary to show a contact of the Customer and/or third parties used by it with a single control address from the inventory leased for business purposes, unless the address user can demonstrate that it received this control address otherwise, without a breach of contract vis-à-vis the Lessor.

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## **8.6. TERMINATION AND CONSEQUENCES OF TERMINATION OF A CONTRACT**

**8.6.1.** The notice period granted to Cooper and the Customer for the termination of an Address Lease Contract is 30 days as of the end of a month. Any leads already supplied to the Customer by such time must be paid, regardless of whether or not the Customer has already used these leads.

**8.6.2.** This does not affect the right to terminate a contract for good cause.

**8.6.3.** Cooper has the right to refuse performance of the services as long as the statutory requirements for the Customer's proper data processing and use are not met or have not been demonstrated and/or has the right to terminate the lease contract with the address user without notice after providing an additional period for meeting such requirements, or demonstrating that they are met, without success.

## **9. SPECIAL CONDITIONS FOR EMAIL MARKETING**

### **9.1. SUBJECT MATTER OF THE AGREEMENT**

**9.1.1.** For the purpose of optimising and expanding the presentation of the Customer, its products and/or services (jointly referred to as "Products") in advertising and communication in the market, Cooper will carry out email marketing in the name and on behalf of the Customer in the context of direct marketing by email ("Campaigns").

**9.1.2.** Cooper has the right to perform the contractually agreed service through third parties or have it performed by third parties.

**9.1.3.** The Customer shall provide Cooper with the address data for the group of recipients to be targeted.

**9.1.4.** The content of a Campaign and the specific group of addressees of a Campaign are determined by the Customer in individual agreements and are specified in Cooper's order confirmation.

**9.1.5.** The analysis, examination and evaluation of the target group structure and behaviour are not part of the services to be provided by Cooper.

**9.1.6.** Cooper does not owe any advice with respect to market strategy, advertising and/or marketing.



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## **9.2. RESPONSIBILITY OF THE CUSTOMER**

**9.2.1.** The Customer has a duty to ensure compliance with the national legal regulations with respect to the content of the Campaign and the recipients that apply in the recipient country. In particular, the Customer must ensure that:

- The required consent of each email recipient to the delivery and analysis of electronic messages has been obtained;
- The sender responsible for the content is clearly identified and that the emails contain an easily recognisable legal notice which includes the required information;
- The recipient was informed about the option to revoke their consent to receiving the newsletter in accordance with the applicable regulations; and
- There will be no tracking (in particular: individual tracking) that is not permitted by the applicable laws and regulations.

**9.2.2.** The Customer has a duty to take all actions that are necessary to enable Cooper to implement the Campaign. The Customer is aware that Cooper can only carry out mailings using electronic channels with the Customer's cooperation. In particular, the Customer must provide data in suitable form and of suitable quality.

**9.2.3.** Where the Customer notices disruptions or deficiencies, it must notify Cooper of them without undue delay and include a specific written description of the fault. The Customer does not need to provide a detailed fault analysis, but the fault description should enable Cooper to reproduce the fault (the description should contain the malfunction and the circumstances in which it occurs). The Customer shall support Cooper in the further analysis and rectification as appropriate. Where the review of a fault notification shows that the disruption did not occur within Cooper's area of responsibility, Cooper is entitled to bill the Customer for the review of the fault notification at the prices in effect at such time.

**9.2.4.** The Customer must comply with all applicable laws and other legal regulations. In particular, it is prohibited from posting and sending data (including address data) and any content that violate legal regulations or public morals or infringe industrial property rights or copyrights or other rights of third parties. The Customer is solely responsible for the data and content provided by it. Where the Customer makes materials and/or content (e.g. brand logos, advertising copy, products) available to Cooper for use, it represents that they are free from rights of third parties and that their use or publication does not violate applicable law in any way. The content made available also includes any content (and its sources) that is (are) recommended or suggested to Cooper by the Customer with regard to the performance of the contracted services. Where claims are brought against Cooper by third parties on the basis of such content originating from the Customer, the Customer shall indemnify Cooper against such claims (including the necessary legal expenses) on first demand. The parties agree that Cooper is only a technical service provider and transmitter of the email messages and therefore under no obligation to review the data and content with respect to legal, factual or other aspects.

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**9.2.5.** Where the Customer breaches its aforementioned duties, Cooper is entitled to block the Customer's data or content entirely or temporarily or to otherwise discontinue contractual services. Where Cooper incurs any damage due to a breach of the aforementioned duties of the Customer for which the Customer is responsible, the Customer shall compensate Cooper for such damage and indemnify Cooper against any claims brought by third parties in this respect.

### **9.3. DATA PROTECTION**

**9.3.1.** In the context of email marketing, Cooper will act as a data processor for the Customer.

**9.3.2.** The Customer is the controller, as defined in Art. 4 GDPR.

**9.3.3.** In accordance with Art. 28 GDPR, the parties will address all matters concerning data protection in a separate data processing agreement.

## **10. CONFIDENTIALITY, USING A PARTY AS A REFERENCE**

**10.1.** The parties agree to keep the content of the agreements executed between them, as well as any trade or company secrets of the other party they learned about, confidential and to not disclose them to third parties.

**10.2.** This obligation of confidentiality does not apply to information that is generally known or was communicated to a party by a third party without any breach of a confidentiality obligation or any information the disclosing party is obligated to disclose by law or official order.

**10.3.** Cooper is entitled to list the Customer as a reference customer (on the website, in advertising material, etc.), to issue a press release concerning the cooperation and/or to also use the Customer's logo in this context. The Customer can prohibit the use of its name and listing as a reference customer in writing at any time.

## **11. FINAL PROVISIONS**

**11.1.** The place of performance is the city in which Cooper's registered office is located.

**11.2.** The law of the Federal Republic of Germany shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

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**11.3.** The place of jurisdiction is where Cooper's registered office is located if both parties to the dispute are businesspersons, legal entities under public law or special funds under public law.

**11.4.** If one or multiple clauses of these GTCs are or become invalid or impracticable, the invalid or impracticable provision shall be replaced with such valid and practicable provision the effect of which comes closest to the commercial objective pursued by Cooper with the invalid or impracticable provision. The foregoing provisions apply mutatis mutandis in the event that the agreement contains a gap.