

## **General Terms and Conditions of Business for direct services Gütersloh GmbH for Services in the Direct Marketing Division**

direct services Gütersloh GmbH  
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**Registered office: Gütersloh**  
**Gütersloh District Court HRB 3827**  
**Managing Director: Axel Hentrei and Dirk Kemmerer**  
**Valid from: 1 March 2017**

### **A) Scope of General Terms and Conditions of Business and their general / special terms and conditions**

I. The following General Terms and Conditions of Business (hereinafter: "GTCs") shall apply to contracts for services in the area of direct marketing where such are concluded between direct services Gütersloh GmbH (hereinafter: "direct services") and the customer when the customer is an entrepreneur as defined by section 14 of the German Civil Code [Bürgerliches Gesetzbuch - BGB], a legal entity under public law or a special fund under public law. Derogating terms and conditions of business of the customer that direct services does not expressly acknowledge in writing are non-binding, even if direct services does not expressly object to them. The following GTCs shall also apply if direct services accepts the order of the customer with knowledge of the opposing or derogating terms and conditions of the customer.

II. If direct services and the customer have reached effective, derogating individual agreements in regard to a contract and such are in contradiction to the following GTCs, the individual agreements shall take precedence over these GTCs in such a case. Otherwise, the following "General terms and conditions" governed by B) below shall apply to all contracts for services in the area of direct marketing. Additionally, the "Special terms and conditions" governed below under C) shall apply if one or more of the services described under I. to III. is the subject matter of the contract with the customer. If the "Special terms and conditions" applicable to the contract contradict the "General terms and conditions," the "Special terms and conditions" shall take precedence over the "General terms and conditions".

### **B) General terms and conditions**

#### **I. Conclusion, expansion and typification of contract**

1. Offers, brochures, etc. from direct services are non-binding and represent only an invitation to the customer to place an order with direct services.

2. An order signed by the customer is a binding offer that direct services can accept within two weeks of receiving such by sending confirmation of the order in writing or providing the service.

3. Services extending beyond the contractually defined scope of service provided by direct services require separate engagement by the customer and the acceptance of such by direct services. Subject to a different agreement, additional services shall be billed according to the prices applicable in the current price list at the time the order is placed. direct services shall inform the customer about the amount by which the additional orders are expected to exceed the original price.

4. direct services is authorised to adjust the services owed by it for operational reasons, provided such does not lead to worse service or to another disadvantage for the customer and is therefore reasonable.

5. If addresses and data of third parties should be used by direct services to provide the services, the customer is responsible for having the third party grant the required usage rights to direct services for the handling of the order.

6. direct services reserves all rights to offer documents prepared by direct services (particularly illustrations and recommended text). They may not be made available to third parties and must be returned immediately to direct services, if requested.

#### **II. Obligations of customer, statutory provisions, rights of third parties**

1. If not agreed otherwise by contract, the customer shall undertake to have all materials (addresses, datasets, databases, templates, hyperlinks, advertising material, keywords, company and brand names, etc.) for an email, advertising or marketing campaign or a comparison of data by direct services as required for proper execution and agreed in contract or arranged in a briefing sent to direct services in the agreed way no later than 5 workdays prior to the agreed commencement. If the customer does not comply with the deadline, direct services shall be authorised to rescind the contract without setting another deadline.

2. direct services reserves the right to process materials sent by the customer and to make changes to such, provided this is required for optimal implementation of the contractual service and is reasonable for the customer.

3. direct services is not responsible for an inspection duty in regard to the materials transferred by the customer. The customer guarantees direct services that the materials do not breach either statutory provisions or the rights of third parties, and indemnifies direct services against any claim by third parties in this regard completely and including the reasonable costs of legal defence. Such also applies in regard to valid declarations of consent from addressees, provided the customer places addresses or databases at the disposal of direct services. The preceding obligations of the customer do not apply in regard to changes to materials by direct services.

4. For the approval of the worked-out contractual service, direct services shall send it to the customer in due time prior to commencement. The customer must grant its approval immediately, but no later than within 5 workdays, by email to direct services. When sending the worked-out service, direct services shall point out to the customer that the contractual service shall be deemed approved if the aforesaid period expires without action. When approval is granted, responsibility for the legal harmlessness of the contractual service is transferred in full to the customer.

### **III. Prices, payment**

1. The prices of direct services' offer forming the basis of the concluded contract shall apply. If there are subsequent additions or changes to the order, the price list applicable at that time shall be authoritative.

2. All price information from direct services is understood to be in EURO, not including the statutory value-added tax as amended. Any postage, mailing or other additional costs incurred shall be calculated separately.

3. If not agreed otherwise, bills from direct services shall fall due for payment upon receipt by the customer and are to be settled immediately, but no later than within 10 days of receipt without deduction. Place of payment is the registered office of direct services.

4. If the customer defaults on payment, direct services is authorised to charge default interest in the amount of 9% p.a. above the respective base interest rate. direct services is also authorised to demand payment of higher interest on account of another legal basis or assert additional damage.

5. If the customer defaults on payment or if an application to open insolvency proceedings is filed against the customer, direct services shall be authorised to withhold any additional services, bill all other already provided services and make the provision of other services dependent on the prepayment of the remuneration for such.

6. The customer is not authorised to withhold payments due to counterclaims or to offset counterclaims unless the counterclaims are undisputed or established as legally valid.

### **IV. Deadlines, force majeure**

1. Delivery deadlines and delivery periods not stipulated by contract are only binding if direct services has confirmed such in writing. The indicated delivery deadlines refer to the date of handover to the natural person designated for the transport or a legal entity engaged for the transport.

2. If the customer does not fulfil co-operation duties and/or deliver preliminary work in time, the delivery deadlines shall be postponed accordingly. The same applies if delays were caused or co-caused by the customer for other reasons (e.g. change requests). direct services is authorised to request compensation for damage and additional expenses resulting from such delays involving a breach of cooperation duties by the customer, unless the customer is not responsible for the breach of the cooperation duties.

3. If there are delays in service due to unanticipated events that direct services cannot influence (e.g. strike or illegal lockout, production stoppages, delays in obtaining data due to late receipt not caused by direct services – also in the case of suppliers of direct services – civil war, acts of terror, natural disasters, import and export bans, shortage of energy and raw materials), the agreed periods for performance shall be extended by the period of the impediment. direct services shall notify the customer of the occurrence of such circumstances. If direct services cannot provide services due to force majeure for the long term, but at least for a period of four months, it shall be released from its obligation to perform. In this event, the customer shall be authorised to withdraw from the contract.

### **V. Place of performance, despatch, transfer of risk, acceptance**

1. Unless agreed otherwise, the place of performance is the registered office of direct services.

2. If direct services assumes responsibility for sending the results of the service at the request of the customer, the risk of accidental loss and accidental deterioration of the results of service shall be transferred to the buyer at the time when these results leave direct services or are sent by direct services – even in the case of despatch by email. If the shipment is delayed by the customer, the risk is transferred to the customer when direct services notifies the customer that the results are ready for shipment. In all other cases, the risk is transferred to the customer no later than upon acceptance. Insurance shall only be provided at the request and cost of the customer.

### **VI. Final reporting, information about prohibition of competition, retention of title**

1. If direct services handles an advertising/marketing campaign for the customer, direct services shall send the customer a final report within one week of its completion.

2. direct services hereby informs the customer that any partners of direct services are not authorised to enter into direct contact with customers of direct services to offer them their services, due to contractual agreements with direct services.

3. direct services shall retain the ownership of the service results until full payment.

### **VII. Liability**

1. direct services shall be liable without limitation for intent and gross negligence; in the case of loss of life, physical injury or damage to health it shall also be liable for any form of simple negligence.

2. Otherwise, direct services shall be liable, irrespective of the legal basis, for itself and its vicarious agents only if a material contractual duty was breached culpably in a manner endangering the purpose of the contract, or if the damage is due to intent or gross negligence. A material contractual obligation is deemed to be an obligation whose fulfilment makes the proper performance of the contract possible at all and which the other contracting partner generally may rely on being performed. If the culpable breach of such a material contractual obligation is not intentional or grossly negligent, the liability on grounds of cause and the amount of the liability shall be limited to the typical damage that was to be reasonably anticipated at the time the contract was concluded.

3. The limitations of liability or exclusions of liability in accordance with B) section VII. 2. shall not apply to liability independent of fault as prescribed by law, such as liability on the basis of a guarantee or in accordance with the German Product Liability Act [Produkthaftungsgesetz].

4. If the liability of direct services is excluded or limited in accordance with B) section VII. 2., this shall also apply to the personal liability of its employees, wage earners, bodies, representatives and vicarious agents.

#### **VIII. Rights of usage, commercial property rights/copyrights, breaches of law, indemnification**

1. If direct services shares addresses with the customer as part of a contractual relationship, direct services shall grant the customer solely a simple, non-transferable right of usage, limited in terms of content and time, for one-time usage of the addresses for the advertising/marketing campaign of the customer.

2. Otherwise, direct services shall fundamentally reserve the right to all address lists, address files, illustrations, drawings, plans, drafts, service results and all other documents (hereinafter referred to collectively as the "materials"), all property rights, commercial property rights and exclusive usage rights under copyright law without limitation.

3. The same applies to the rights to the data warehouse used for sharing and accessing customer data. direct services shall reserve all rights to this tool. direct services is authorised to modify this tool, also during the execution of the contract, if this does not lead to service restrictions or other disadvantages for the customer.

4. If a third party asserts legitimate claims against the customer due to a breach of commercial property rights, other third party rights or another right due to the materials delivered by direct services and used in accordance with the contract, direct services shall choose, at its own cost, between acquiring the missing rights to the materials in question or modifying or exchanging the materials so that there is no longer a breach of rights. If this is not possible or reasonable for direct services, the customer shall be entitled to the statutory rights.

5. direct services shall only have the obligations under B) section VIII.4. if the customer notifies direct services immediately in writing of the claims asserted by third parties, does not acknowledge the breach of law itself and reserves the right to take all measures to defend itself and pursue settlement negotiations. If the customer discontinues the usage of materials to minimize damage or for other important reasons, it must notify the third party that the discontinuation is not connected with acknowledgement of a breach of law.

6. Claims of the customer are excluded if it is personally responsible for the breach of law, or if this is caused by the use of materials not anticipated by direct services or is caused by the fact that the materials from the customer are changed or used together with materials not coming from direct services.

7. If the customer must provide direct services with or sends direct services materials such as photos, drawings, graphics, plans, texts, claims, hyperlinks, banners, advertisements, commercial property rights (e.g. brands, utility models, registered designs), and/or other documents for the fulfilment of the contractual services, the customer shall grant direct services the usage rights to these materials to the extent required, warrant vis-à-vis direct services that these materials are not encumbered by third party rights and do not breach applicable law and completely indemnify direct services against all claims, including reasonable costs of legal defence, in the case of a claim asserted by a third party as a consequence of using these materials.

8. If direct services handles the placement of hyperlinks, banners and/or other advertisements on other internet sites for the customer, the specific placement is subject to the discretion of direct services. Furthermore, direct services is authorised to identify these advertisements as advertising or promotion.

9. If the addressees of advertising/marketing campaigns or a third party assert breaches of law in connection with the usage of addresses by direct services or the customer, the customer shall be obligated to clarify such breaches of law directly with any owners of the address, unless direct services is responsible for the breach. In such a case, direct services shall disclose the identity of an address owner to the customer, if requested in writing.

#### **IX. Unauthorised usage of addresses / data / data analysis results and contractual penalty**

1. In the case of any culpable usage of addresses / data in breach of contract, the customer shall undertake to pay a contractual penalty amounting to five times the compensation for the order that is the basis of the addresses or data used. The same applies to the usage of data analysis results in breach of contract.

2. To prove the usage of addresses / data in breach of contract, it shall be sufficient if usage of a control address / control data in breach of contract is proved.

3. direct services shall remain free to assert additional claims for damage compensation. The contractual penalty in the case of a claim for damage

compensation shall be credited to the amount of damage compensX.  
**Responsibility for customer's website pages**

1. If direct services places advertisements on the customer's website pages, the customer shall warrant vis-à-vis direct services that these website pages are unencumbered by third party rights, do not breach applicable law, and shall completely indemnify direct services against all claims including the reasonable costs of legal defence in the case of a claim asserted by a third party as a consequence of linking to these website pages.

2. Independently of the aforesaid provisions, the customer's website pages for which direct services provides services must comply with all statutory requirements and may not breach applicable law, common decency or third party rights. They must have sufficient content and may not include any larger areas that are under construction.

#### **XI. Confidentiality**

1. The content of the contractual provisions agreed by the parties in each individual case, each respective party's transferred data and documents and all other confidential information (hereinafter "information") must be treated strictly confidentially by the customer and may not be disclosed to third parties, shared with third parties, used by the customer for other purposes than those in direct connection with the fulfilment of the customer's contractual obligations.

2. The customer shall undertake to ensure that all its employees are obligated to preserve confidentiality to the extent set forth in B) section XII.1.

3. The customer shall not be obligated to preserve confidentiality only if a) the information is demonstrably known in general or to the customer prior to the conclusion of the contract or becomes known in general otherwise without the customer being responsible for such; b) the information was made available to the customer by third parties on a non-confidential basis, unless the customer was aware that this third party breached a confidentiality agreement with direct services by sharing the information or c) the customer is obligated by law to disclose the information in court, regulatory or other proceedings.

4. The obligation to preserve confidentiality shall continue after the end of the contractual partnership between the parties or the end of the advertising/marketing campaign.

#### **XII. Term of contract, remuneration in the case of premature termination of the contract**

1. The individual contractual relationships between direct services and the customer shall extend from the conclusion of the contract to the end of the agreed advertising/marketing campaign and the satisfaction of all mutual contractual claims and obligations.

2. If the customer cancels the contract after the conclusion of the contract and prior to the fifth day before the agreed start of the advertising/marketing campaign, it shall be obligated to pay direct services 20% of the agreed remuneration as a cancellation fee and compensation for expenses, but at least the already-incurred costs against issuance of an invoice.

3. If the customer cancels the contract after the conclusion of the contract and as of the fifth day before the planned start of the advertising/marketing campaign, it shall be obligated to pay direct services 100% of the agreed remuneration as a cancellation fee and compensation for expenses against issuance of an invoice.

4. The customer shall remain free in the cases of B) section XII.3 and 4 to provide proof that direct services incurred less damage.

#### **XIII. Provisions on limitations**

1. The general period of limitation for claims based on material defects and defects of title shall be one year from the date of delivery. If acceptance is owed, the expiry period shall commence with acceptance. The period of limitation shall also apply to the customer's contractual and non-contractual damage compensation claims based on a defect, unless the application of the standard statutory expiry periods (sections 195, 199 of the German Civil Code [Bürgerliches Gesetzbuch - BGB]) would lead to an early expiry in an individual case.

2. B) section XIII (1) shall not apply in the cases of B) section VIII (3) or (4) (1), in the case of liability independent of fault as prescribed by law (e.g. on the basis of a guarantee or in accordance with the Product Liability Act [Produkthaftungsgesetz]) or if statutory special rules on expiry apply (e.g. section 438 (1) (1), section 479 (2) or e.g. section 634 (a) (1) (2) of the German Civil Code).

#### **XIV. Miscellaneous**

1. Amendments and additions to the contract and these GTCs must be made in writing. This also applies to any amendment of this written form requirement.

2. The law of the Federal Republic of Germany shall exclusively apply to all legal relationships between direct services and the customer, to the exclusion of the provisions of the United Nations Convention on the International Sale of Goods (CISG).

3. Sole place of jurisdiction for all disputes based on the business connection is the registered office of direct services.

4. If individual provisions in these GTCs or parts thereof are or become invalid in whole or in part, section 306 of the German Civil Code shall apply. Otherwise, the statutory provisions of the German Civil Code and the German Commercial Code [Handelsgesetzbuch - HGB] shall apply, unless agreed otherwise in the contract or these GTCs.

#### **C) Special provisions**

direct services offers diverse services for the execution of all forms of direct marketing. The services include, among others, campaign management, letter shop, email marketing, email mailings, banner advertising, address generation, lead generation, concept & strategy consulting, online design, email append and much more. If and to the extent that one or more of the services described in the following under C) sections I. to V. is the subject matter of the contract with the customer, the Special provisions agreed there for the subject matter of the service shall apply additionally and, in the event of contradictions, take precedence over the General provisions under B) of these General Terms and Conditions.

#### **I. Advisory, agency and mailing services**

1. direct services offers advisory services for the planning and execution of marketing campaigns.
2. direct services provides agency services within the framework of its creative service; these services include primarily the development of ideas and concepts for direct advertising. direct services handles both the graphic design and the texts for the respective campaign.
3. direct services also offers mailing services. This relates to the mailing of any campaigns by post/email/display/mobile, etc.
4. direct services provides its services in accordance with the standard practices in the advertising industry, but shall in particular not be responsible for ensuring that the advertising campaigns of the customer executed on the basis of the advisory services and/or agency services and/or mailing services bring about specific economic success, particularly increases in sales revenue or results.
5. direct services shall satisfy change requests made by the customer in regard to the services if this is possible and reasonable from an operational point of view. The Parties shall undertake to make any necessary adjustments to the contractual conditions immediately, particularly an increase in remuneration or a postponement of deadlines.
6. Meeting logs sent by direct services shall be binding if the customer does not object to them immediately after receipt.
7. KAM and IT Support can be reached on workdays – except on (possibly, state-specific) holidays – from 9:00 am to 5:00 pm.

#### **II. Display mobile advertising**

1. In the area of display mobile advertising, direct services offers the customer liaison services for media coverage by owners or marketers of media coverage in order to include advertisements of the customer in this media coverage, particularly in the form of banners, rectangles, skyscrapers, layers, pop-ups, video ads, text ads, text/image hybrid ads, content integration, etc.
2. In regard to media coverage brokered by direct services, the guidelines of the owners or marketers expressly mentioned in the order shall apply to the customer.
3. The delivery of advertisements shall be handled by the owners or marketers. direct services shall have no influence on the position, representation or performance of the customer's ads and shall not assume any liability in this regard.

#### **III. Data delivery, analysis and enhancement**

1. In the area of data delivery, analysis and enhancement, direct services offers the following services:
  - a) Address enhancement with data: Addresses provided by the customer are enhanced by direct services with data (from its own research and/or licensed data) and placed at the disposal of the customer again.
  - b) Data processing: Addresses / data provided by the customer are/is processed for the purpose of standardisation, correction, comparison, elimination, quantification, selection and the preparation of files;
  - c) Data selection: Preparation of selections for campaigns of the customer via various channels such as e.g. post, email, display, mobile;
  - d) Data delivery: Delivery of a data file generated by direct services (data from its own research and/or licensed data) to the customer for its contractually defined usage;
  - e) Data analysis: direct service analyses the data provided by the customer by means of a statistical-mathematical procedure
2. direct services shall retain the property rights/copyrights or related property rights and/or usage rights to the addresses and/or data generated by direct services and placed at the disposal of the customer, unless otherwise regulated in the contract or these GTCs.
3. In the case of data analyses, direct services prepares an analysis report (statistical report on the entirety of the data) and (at the discretion of direct services) a so-called scorecard (statistical function on the individual evaluation of addresses and data). The analysis report is handed over to the customer and may be used by the customer only for its own purposes (no transfer to third parties); the scorecard shall remain with direct services, and direct services shall retain the sole right of usage.
4. Addresses delivered to the customer may only be used once for written advertising measures of the customer, unless something to the contrary is agreed in contract. The customer shall bear responsibility for the legal

permissibility of its usage of the addresses. It is not authorised to save or store in another form the delivered addresses beyond a short-term storage period of no more than 12 weeks for checking success after delivery by post. After the agreed usage, the addresses must be destroyed or deleted immediately without replacement, and this must be confirmed to direct services immediately in writing, if requested. In particular, the customer is not authorised to transfer the provided addresses in whole or in part, in original or in copy, to third parties or to sell or use them for other advertisement mailings. In this regard, tie-in promotion is only permitted on the basis of an explicit contractual agreement.

5. Data delivered to the customer may only be used for the purpose set forth in contract. The customer shall bear responsibility for the legal permissibility of its usage of the data. After the agreed usage, the data must be destroyed or deleted immediately without replacement, and this must be confirmed to direct services immediately in writing, if requested. In particular, the customer is not authorised to transfer the provided data in whole or in part, in original or in copy, to third parties or to sell it.
6. If the customer receives orders or enquiries on account of the usage of the delivered addresses, it is authorised to enter the addresses of these persons permanently in its own address databases.
7. direct services is authorised to check compliance with the aforesaid limitations of usage by using control addresses and/or control data at any time.
8. The databases offered by direct services are provided on the basis of statistical evaluations of data substances and on the basis of information provided by a third party. The data substances are processed to the best of our knowledge and judgement. The Parties acknowledge that a certain error rate is fundamentally inherent in statistical analyses and information from a third party, and such shall be in conformity with the contract.
9. direct services updates its address databases and/or general databases at regular intervals standard in the industry. Therefore, it cannot assume a guarantee for the addresses and/or data being up to date, correct or complete. Rather, an error rate of 8% in regard to household addresses and 4% in regard to other addresses is viewed as in conformity with the contract.
10. Since the address databases from direct services are subject to constant change, direct services endeavours to constantly update its address databases. Accordingly, there may be positive or negative deviations in the number of addresses between the amount forming the basis of the order confirmation and the amount provided for the actual execution of the order. direct services is authorised to exceed or fall short of the number of addresses indicated in the order by 10% without consulting the customer. There shall be no deficiency of addresses within this range. Positive or negative deviations in the quantity shall be taken into account in the remuneration, unless this is not compatible with the essence of the individual agreement (comparison of multiple address databases, etc.).
11. Since the databases held by direct services are constantly subject to changes for the aforesaid reasons, there may be, within the scope of the offer to deliver a data file, positive or negative deviations between the amount of the delivered data quantity forming the basis of the order confirmation and the data quantity provided during the actual execution of the order to deliver data. Positive or negative deviations of up to no more than 10% shall not represent a deficiency in the delivered data file. Positive or negative deviations shall be taken into account in the remuneration only if they exceed or fall short of the data quantity specified in the offer by more than 5%.
12. In contrast to the delivery of a data file, the delivery of a certain amount of data is not promised as part of address enhancement. The address quantity delivered by the customer shall be edited and, if possible, enhanced with data.
13. As part of the data analysis, direct services uses standard statistical-mathematical procedures and discoveries in the industry and also discoveries gained from its own experiences. There is no further obligation, particularly in regard to the completeness and accuracy of the analysis results.