

## **General Terms and Conditions**

### **for Advertising offers from Online Shops on idealo Websites**

Updated: 1st August 2016

#### Preamble

1. WHEREAS, the Partner sells products and/or services to customers via its internet service, which is separately named between the parties, (hereinafter also: "Online Shop").
2. WHEREAS, the company idealo internet GmbH (hereinafter: "idealo") is engaged in the operation of product and price comparison of goods and services on the internet. On the website [www.ideal.de](http://www.ideal.de) and on idealo's partner websites including mobile applications and by means of email messages (hereinafter individually and jointly referred to as: "idealo Websites"), potential buyers (hereinafter: "Customers") can obtain information about products and services offered by third parties on the internet ("Listing"). Furthermore, Customers can purchase goods or services directly within idealo Websites via the Checkout service (*German: Direktkauf*). Listing and Checkout service are individually and collectively named "Advertising".

#### **§ 1 Object of the Agreement**

1. At its free and sole discretion, idealo advertises a selection of the Partner's offers on idealo Websites via Listing and/or a Checkout service). idealo places one or more links from the Listings to the URL of the Online Shop, that has been designated by the Partner. Any purchase or other agreement takes place directly and exclusively between the Customer and the Partner. With Checkout, users may purchase goods or services of the Partner directly on the idealo Websites. The online process for Checkout (including payment) takes place both technically and visually within the idealo Websites. The purchasing agreement, however, is conducted directly and exclusively between the Partner, as the seller, and the user and/or Customer, as the buyer. The further handling of the purchase also falls within the scope of the contractual relationship between the Partner and the Customer. Only those articles that are simultaneously listed for price comparison by the Partner and sold by the Partner itself may be offered for Checkout.
2. idealo is not obliged to ensure the availability and functionality of idealo Websites or to list the Partner's offers on the Websites.
3. idealo can provide the Partner with software for the use of export functions from the Partner's database (hereinafter: "Export Module"). idealo can discontinue the Export Module service and/or terminate the Partner's right to use this service at any time without prior notice. idealo can assist the Partner in using the Export Module and/or in the transfer of data (hereinafter: "Installation Service").

## **§ 2 Consideration**

The Partner remunerates idealo for the Advertising: For Listing on idealo Websites, a fee is paid for every visit to the Partner's websites that is generated by idealo (hereinafter "Click"). For Checkout commission is paid on all sales revenue. The amount to be paid is determined by the Cooperation Agreement between the Partner and idealo.

## **§ 3 Obligations of the Partner**

1. The Partner is only permitted to provide idealo with offers that comply with statutory provisions. In particular, the Partner is not permitted to use false or misleading advertising for its products and services or provide idealo with offers that infringe against copyright, trademark or other laws. In particular, information provided to idealo regarding the fees for various payment methods and for the cost of delivery must comply with statutory regulations.
2. The Partner shall independently perform and take responsibility for all services connected with the use of the Online Shop. However, for Checkout, idealo is authorised by the Partner (but not obliged) to communicate with the Customer (if necessary in the name of the Partner) in relation to orders via Checkout including any necessary rescinded transactions and/or guarantees to the Customer; the Partner shall inform idealo about all communication between the Partner and the Customer (including after the article has been shipped; for example in cases of complaints and warranties). For this purpose, the Partner shall promptly send idealo all necessary confirmations, instructions and information together with the idealo Transaction Number in order to ensure that the respective Checkout purchase can be attributed and documented correctly.
3. As payment method, the Partner offers the Customer at least one other standard payment option (e.g., credit card, invoicing or direct debit), and not exclusively advance payment (e.g., via bank transfer).
4. The total domestic shipping costs per product calculated for the Customer by the Partner (including fees for various payment methods) amount to a maximum of EUR 15.00 for small items and EUR 50.00 for large items, including any charges added to the purchase price for eventual returns, insurance or additional transaction fees. Higher delivery costs are only permitted on exception in cases of delivery via freight forwarding agent.
5. The Partner guarantees that it can and will acquire, sell and dispatch the articles according to the conditions applicable to the respective order. Any complaints, returns or similar shall be duly processed and dealt with in accordance with applicable legal regulations.
6. The Partner agrees to use Customer data only in accordance with the consent granted by the Customer and the legal stipulations.

#### **§ 4 Billing and Payment**

1. idealo compiles a monthly performance report and calculates the resulting remuneration due in accordance with § 2, plus the statutory VAT (when applicable). The reporting is retrievable for the Partner.
2. Determination of the Advertising to be remunerated is carried out exclusively by idealo. Upon request, the Partner has the right to access and inspect the documents and any other evidence necessary for checking the accuracy and completeness of the determined Advertising and the resulting invoices once per year. This right applies only to invoices that the Partner received from idealo within the last 15-month period before the inspection. The inspection must take place at an appropriate time, i.e., announced with sufficient lead time and carried out during idealo's regular office hours. Due to the confidential nature of these documents and this information, the inspection must take place at idealo's offices and can only be performed by a certified accountant or another specialist who is legally bound to confidentiality by his/her profession (hereinafter jointly and separately referred to as: "Auditor"). The statutory provisions, in particular those regarding data protection, are to be observed. The acting Auditor will forward only data and results that are required for the invoicing process to the Partner. If the Auditor's inspection uncovers a deviation to the Partner's disadvantage of more than five per cent for which idealo is responsible, then idealo shall be required to pay the reasonable inspection costs incurred; otherwise the Partner shall carry these costs.
3. If the invoice amount is less than EUR 20.00 excluding VAT, then idealo has the option of waiting to invoice until the total remuneration due exceeds this amount. idealo is entitled, but not required, to send the invoice in pdf format via email to the email address provided for this purpose by the Partner.
4. The invoice amount is due immediately. Any costs associated with the payments, including any back payments, are to be carried by the Partner in accordance with its agreements with its payment service provider.
5. idealo reserves the right to send invoices biweekly (every 14 days) rather than monthly.
6. Valid payment reminders of overdue invoices can be sent by idealo in text form to the email address provided for this purpose by the Partner.

#### **§ 5 Cooperation and Information Duties of the Partner**

1. In order to ensure that the Partner's offers listed by idealo remain up to date, the Partner is obligated to provide idealo with all the information and documents necessary for the Listing and/or Checkout and those that are required for legal/economic purposes at the frequency and in the format requested

by idealo. Handover location for and structure of the information to be provided are to comply with guidelines that will be specified by idealo.

2. At the Partner's request, idealo can suspend the Advertising of the Partner's offers (hereinafter: "De-Listing"). The Partner must submit any De-Listing requests via email to mail@idealo.de, effective the following working day, whereby Saturday is not considered a working day. In particular, the clearing or deletion of the Partner's CSV file does not result in De-Listing.
3. The Partner agrees to assess idealo's services and participate in market research and opinion polls when asked to do so by idealo. All survey results will be processed and used without reference to a person. The Partner may withdraw consent at any time to this data being used by idealo.

## **§ 6 Additional Provisions for Participation in Checkout**

### **1. Payment Methods**

- (a) **Paypal:** For this payment type, idealo will trigger the transfer of the Customer's PayPal payment to the PayPal account of the Partner. To this end, the Partner shall grant idealo the required PayPal authorisations. The current, respective guidelines on PayPal Buyer Protection and Seller Protection as well as the PayPal terms of use shall apply
- (b) **Credit card:** The technical implementation of the credit card payment type shall be carried out via idealo. idealo supports the Partner with preventative measures to secure against credit card fraud. Any chargeback risks are borne by the Partner. In order to allow users to pay by credit card, separate Cooperation Agreements, only available via idealo, must be signed with one of the respective credit card payment providers (Acquirers) cooperating with idealo.
- (c) **SOFORT Online Bank Transfer (online wire transfer, *German: Sofortüberweisung*):** The technical implementation of this payment type shall be carried out by idealo. For the purpose of using this payment type, the Partner shall grant idealo the required authorisations.

### **2. Communication**

- (a) The Partner names a contact person who is authorised to make decisions and can be contacted, including by telephone, at short notice during business hours.
- (b) Before starting the Advertising, the Partner sends idealo its general terms and conditions or conditions of sale, its data protection policy and any other necessary documents and agreements with its future Customers for Checkout. Any amendments made to the above documents must also be sent promptly to idealo.
- (c) As well as supplying its offer data, the Partner shall connect to idealo technically via a web service API provided by idealo, in order to enable the automated processing of orders. If a technical API connection is not possible, the processing of orders shall be carried out manually by the Partner.
- (d) The Partner shall trigger the channel of communication at least once every working day and conduct the required declarations and operations within the defined time period. idealo shall determine which of the Partner's communication channels shall be used for this purpose and the time period within which the declarations and/or operations must be conducted. The Partner is solely responsible for these declarations and operations and shall bear all associated risks. If the Partner does not declare acceptance of the user's binding offer of purchase within the jointly defined time period, idealo is entitled to issue a rejection to the Customer in the Partner's name.

## **§ 7 Usage Rights**

1. The Partner provides idealo with texts, logos, trademarks, product images, videos and other written or graphical representations in the highest resolution available to the Partner that facilitate identification of the Partner or its offers, (hereinafter individually and jointly referred to as: "Content") and grants idealo, in particular with regard to all existing industrial property rights, the simple, gratuitous, revocable, spatially and temporally unlimited usage rights to this Content (including adaptation rights, insofar as editing and rearrangement preserve the original spirit and character of the work). Provided that the Partner does not object, idealo can also obtain Content from the websites of the Online Shop. idealo is not required to credit the author. The scope and content of the rights of use is limited to what is appropriate for the operation of the idealo Websites and the promotion of the Online Shop, its respective offers and the idealo Websites.
2. The Partner is not permitted to extract any content or offer data saved by idealo or published on idealo's Websites (hereinafter referred to as: "idealo Content"), either through copying or through readout methods (e.g., screenscraping) or via third parties, unless this Content was provided to idealo by the Partner itself.

## **§ 8 Customer Reviews**

1. idealo is entitled to publish both positive and critical Customer reviews regarding the ordering process and service of the Online Shop without closer examination as to whether the content of a review is correct, unless the Partner provides convincing proof to idealo that the content of a given review is incorrect.
2. In its email correspondence with the Customers and on the websites of the Online Shop, the Partner shall indicate the possibility of submitting a review on the idealo Websites. The Partner will not exercise any influence over the content of the Customer reviews and shall not write or submit any reviews.

## **§ 9 Contract Period and Termination**

The Cooperation Agreement runs for an indefinite period of time and can be terminated by either party with prior notice of four weeks to the end of each quarter. The right to termination for justifiable cause without prior notice remains unaffected. Justifiable cause applies in particular when a Customer complains to idealo about the order processing and services that the Partner is to perform and the Partner does not prove to idealo that it has redressed this complaint to the satisfaction of the Customer within two working days. Termination notices can be submitted via email to mail@idealo.de and the operational contact that the Partner named in the Cooperation Agreement, respectively.

## § 10 Liability

1. Both parties operate their respective internet service (idealo Websites or Online Shop) independently from one another and are solely responsible for the content, functionality and legality of their own websites.
2. idealo assumes no responsibility for Customer behaviour. In particular, idealo is not liable for any loss or damage caused or alleged to be caused by a Customer. Likewise, idealo is not responsible for and expressly does not guarantee any certain volume of sales, revenue or other success generated by visitors from the idealo Websites.
3. The Partner shall keep idealo indemnified and held harmless from all third party claims, in particular those arising from the graphics, content or technical design of the websites of the Online Shop and/or the products, services and information offered or not offered on them, including those available for Checkout. This also holds true for third party claims arising from information, particularly Content, that the Partner has provided to idealo and that idealo has used. The Partner shall keep idealo indemnified and held harmless from any legal claims, rights or remedies in connection with contractual obligations, insurance or guarantees that the Partner has assumed with respect to a third party within the scope of concluding this contractual relationship (in particular within the scope of order processing). This does not apply if the Partner is not responsible for the infringement.
4. If Customers invoke the conditions of the Online Shop against idealo, and if the Online Shop submitted these conditions to idealo but does not hold them effective for the Customer (e.g., free returns), idealo has the right to fulfil these conditions for the Customer in the stead of the Online Shop. The Partner will reimburse idealo for any and all costs hereby incurred.
5. idealo is liable – regardless of legal grounds – only
  - (a) in the case of wilful misconduct or gross negligence of a statutory representative, an executive employee or another vicarious agent,
  - (b) on the merits of each culpable injury of a duty, the proper fulfilment of which constitutes a condition sine qua non and on the fulfilment of which the Partner regularly relies (so-called cardinal duties), in the case of default or impossibility of performance, whereby liability for financial losses and property damage is limited in amount to foreseeable, typically occurring damage or loss.
  - (c) The above limitations on liability do not apply in cases of mandatory statutory liability, in particular those pursuant to the German Product Liability Act (Produkthaftungsgesetz), assumption of a guarantee or loss or damage resulting from culpable injury to life, limb or health.
6. If idealo provides an Export Module as described in § 1.3, then idealo is not liable for its problem-free operation, the safety of the data transferred and/or any eventual damage that the Export Module might cause to the devices of the user. Any use of the Installation Service will not relieve the Partner from his sole responsibility for the data transfer.

## **§ 11 Confidentiality**

1. The parties agree to maintain the secrecy of any confidential information. This involves in particular information regarding the business, business procedures, price structures, transactions and financial statements, financial or contractual agreements, the contents of this contract and the procedures and programs used by idealo. In the case of doubt, it is to be assumed that information about the modes of operation of a contractual party that the other contractual party obtains within the scope of the cooperation is to be kept confidential. This obligation remains in effect for a period of two years after termination of the Cooperation Agreement.

Excluded from this obligation is confidential information:

- (a) that the recipient party can prove to have obtained either before concluding the contract or afterwards from a third party without in any manner breaching a confidentiality agreement, statutory provision or official order;
  - (b) that is publicly known before concluding the contract or is made publicly known thereafter, insofar as this does not stem from a breach of this contract;
  - (c) that must be disclosed as a result of a statutory requirement or by order of a court or public authority. To the extent that it is permissible and possible, the recipient party legally required to disclose this information shall inform the other party in advance so that this party has the opportunity of taking action against the disclosure.
2. The contractual parties shall grant access to confidential information only to such consultants that are bound to secrecy by their profession or bound to the confidentiality obligations of this contract. Furthermore, the parties will reveal confidential information only to those employees of their company and of companies bound with idealo in accordance with § 15 German Stock Corporation Act (Aktiengesetz) who must have access to this information in order to carry out the provisions of this contract. Moreover, these employees shall be obligated to maintain confidentiality even after termination of their employment relationship to the company to the extent that this is permitted under German labour law. The contractual parties are further obligated to take precautions to hinder third parties from accessing confidential information.
3. Each culpable breach against the regulations in § 11.1 und § 11.2 carries a contractual penalty to the amount of EUR 1,000.00 (one thousand Euro). The injured party reserves the right to further claims. A penalty paid will be credited against a claim for damages.

## **§ 12 Adjustments for Consumer Price Index**

1. If the "Consumer Price Index for Germany" (German: "Verbraucherpreisindex für Deutschland") published monthly by the Federal Statistical Office (German: Statistisches Bundesamt) (available at: <http://www.destatis.de>), differs more than 5 per cent from the index published for the month when this Cooperation Agreement was signed, then the remuneration to be paid by the Partner is automatically adjusted proportionally and rounded to the nearest 0.1 Euro cent in accordance with commercial rounding. These changes become effective beginning the following month.

2. This regulation shall continue to apply to every further change in the Index in relation to the last adjustment in remuneration.

### **§ 13 Amendments to the Agreement**

1. idealo reserves the right to amend this agreement for important reasons, in particular in the event of a change in law or in the wake of a supreme court decision. Furthermore, idealo reserves the right to amend less significant provisions of this agreement at any time and without naming any particular reason, insofar as this change does not lead to a rearrangement of the structure of this contract as a whole.
2. The amended conditions will be communicated in text form via email at least six weeks before taking effect. If the Partner does not object to the validity of the amended agreement in text form within six weeks after receiving the email, then the amended conditions shall be deemed as accepted. idealo will specifically indicate the possibility of objecting to the amendment and the consequence of the six-week deadline.
3. If the Partner objects to the validity of the new (amended) agreement, then the desired amendment of idealo is deemed to be rejected. The contract shall then be continued without the suggested amendment. The right of idealo to proper contractual termination remains hereby unaffected.

### **§ 14 Final Provisions**

1. Should any provision of these General Terms and Conditions be or become fully or partially void or invalid, this shall not affect the validity of the remaining provisions. Any unincorporated or invalid General Terms and Conditions are replaced by German statutory law (§ 306 Abs. 2 BGB - German Civil Code). Apart from that, the parties shall undertake to replace the invalid or ineffective provision with an effective provision that comes as close as possible to fulfilling the economic intent and purpose of the invalid or omitted provision, insofar as a supplemental interpretation does not take precedence or is not possible.
2. German law applies exclusively.
3. Amendments and supplements to this agreement are only effective in text form. This also applies to the sentence on text form above.
4. Place of performance is Berlin. The exclusive place of jurisdiction for claims in connection with the implementation of this contractual relationship is Berlin, district "Mitte", as agreed upon, insofar as the Partner is considered a merchant under German Commercial Code (Handelsgesetzbuch, HGB), has no permanent residence in Germany, has moved permanent place of residence abroad since this agreement went into effect, or the residence or habitual abode is not known at the time that the complaint is filed.