



## General Terms and Conditions (GTC)

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DE272237271

## 1. Preamble

- 1.1. AdBroker GmbH i.G. (below: AdBroker) offers a platform for the trading with online advertising space at [www.adbroker.de](http://www.adbroker.de) and other URLs.
- 1.2. The contractual partners utilize this service as an advertiser/agency (below: Advertiser) or operator of a Web site/advertising network (below: Publisher). The contractual partner has full legal competence or is represented by a legal representative who has full legal competence.
- 1.3. These General Terms and Conditions regulate the collaboration between AdBroker and the contractual partner.
- 1.4. The registration with AdBroker constitutes a contractual relationship between AdBroker and the registering party.

## 2. General

- 2.1. The General Terms and Conditions apply that are currently published at: [www.adbroker.de](http://www.adbroker.de) AdBroker reserves the right to change the General Terms and Conditions at any time.
- 2.2. The contractual partner will be notified in writing or by e-mail about any changes in the General Terms and Conditions. They shall be considered as accepted if the contractual partner does not object in writing or by e-mail within a period of 2 weeks upon the notification. With the notification, AdBroker shall point out expressly to the contractual partner this consequence of his conduct.

The right of the contractual partner to withdraw from the contract due to the change in the General Terms and Conditions remains unaffected thereof.

- 2.3. The General Terms and Conditions of the contractual partner are expressly objected to insofar as they deviate from the provisions below. In this respect, the contractual partner's deviating terms and conditions shall not become an integral part of the contract.

The General Terms and Conditions of the contractual partner differing from these provisions shall become an integral part of the contract between AdBroker and the contractual partner, in their entirety or partially, only if the parties make an express agreement in this regard in individual cases.

## 3. Publisher

- 3.1. The Publisher with one or more Web sites/channels/network assignments (below: Inventory) applies for a participation in the services offered by AdBroker. AdBroker reserves the right to decline applications without giving reasons.
- 3.2. The Inventory is checked by AdBroker and may be rejected (also in parts).
- 3.3. After the Publisher went live and his AdBroker account was activated, the Publisher can create corresponding advertising spaces for each inventory and technically implement them.
- 3.4. AdBroker may delete or deactivate Inventory in the Publisher's AdBroker account (Publisher account) for which no advertising space has been created over a period of at least 14 days or for which all advertising spaces together have generated fewer than 1,000 views. The same applies to Publisher accounts if no advertising spaces and/or Web sites were created over a period of at least two weeks, if less than 1,000 views were generated, or if the Web site in the Publisher account had to be deleted/deactivated.
- 3.5. Any current campaigns in conjunction with the type of campaign (view, click, lead or sale) and the corresponding commissions agreed will be listed for the Publisher in the login area.
- 3.6. For the generation of an activity (view, click, lead, sale) in his advertising spaces, which is required for a campaign, a Publisher will obtain a reimbursement of advertising costs determined beforehand.
- 3.7. The Publisher is obligated to keep his contact data always updated, so AdBroker can reach the Publisher by e-mail, telephone and regular mail at any time.

The Publisher has also to ensure that AdBroker always has the correct and updated data of the Publisher that are relevant for a proper invoicing—in particular in terms of taxes. The Publisher has to inform AdBroker promptly about any changes in his circumstances—especially in terms of his entitlement to pre-tax deduction.

Any breach of this regulation shall incur a contractual penalty for the Publisher according to Item 11.8.

- 3.8. The Publisher has to keep his Web site accessible and retrievable during the entire duration of the contractual relationship with AdBroker.

The Publisher shall not publish any contents that are illegal, harmful to minors, erotic, pornographic, racist, offensive, extremist, fundamentalist or any other suchlike contents on his Web site. In addition, the Publisher shall not place the advertisement in peer-to-peer file sharing, desktop applications, toolbars, spyware and other applications or on sites dealing with these issues. Sites with the contents of weapons, drugs, prescription drug abuse, gambling/betting, alcohol and tobacco are likewise excluded.

Any culpable breach of this regulation by the Publisher shall incur a contractual penalty according to Item 11.8.

#### 4. IASH regulations

The Publisher has to comply with all the items listed in this section for every Web site of his Inventory.

- 4.1. The Publisher of the Web site either owns the contents that are shown on all URLs, on which activities are running, or he possesses the pertinent rights of use.
- 4.2. The Web site does not contain “viruses” or any other destructive programming that is capable of impairing or damaging the data, computer systems or software.
- 4.3. The Web site does not violate applicable law, in particular the regulations for the protection from deceptive or other dishonest advertising; the prohibition of gambling; competition law and criminal law.
- 4.4. The content of the Web site originating from the Publisher or on behalf of the Publisher does not encompass contents that are damaging to reputation, violate laws on the protection of personal rights or intentionally contain untrue facts for the purpose of deception of legal relations.
- 4.5. The content of the Web site originating from the Publisher or on behalf of the Publisher does not violate intellectual property rights or any other property rights at any time.
- 4.6. Neither the Publisher nor the Web site is involved in activities such as pirate copying, computer hacking and other activities that are illegal according to applicable law; nor do they support or facilitate such activities.
- 4.7. In terms of illegal activities or contents that are put on his Web site without the Publisher’s knowledge or awareness of this illegitimacy, the Publisher subjects himself to a so-called notice and takedown policy that complies with the applicable law.
- 4.8. The Publisher endeavors to an adequate and reasonable extent not to integrate any content with his Web site that is prohibited by the IASH.EU Codex. See the definitions of “blocked inventory” in Compilation C of the IASH.EU Code of Conduct ([www.IASH.EU.org.uk](http://www.IASH.EU.org.uk)).
- 4.9. The Publisher places the codes/advertisements designated for his Web site exclusively on this Web site and ensures in particular that these codes/advertisements will not be resold or passed on.

#### 5. Advertiser

- 5.1. The Advertiser applies with his campaign for a participation in the services offered by AdBroker. AdBroker reserves the right to decline applications without giving reasons. Should the application be declined, the Advertiser has no claims for compensation for damage or any other claims against AdBroker.
- 5.2. If the Advertiser wants to place several campaigns with AdBroker, he has to register each campaign individually. Every further campaign will be examined in turn by AdBroker and may be declined as the case may be.

- 5.3. Item 3.8. applies analogously to the contents of the advertisements to be placed and the Web sites of the Advertiser.

Any culpable breach of this regulation by the Advertiser shall incur a contractual penalty according to Item 11.8.

## 6. Publisher accounts

- 6.1. AdBroker keeps a separate (virtual) account (AdBroker account) for each Publisher. The commissions earned by the Publisher will be credited to this account and paid out to the Publisher.
- 6.2. AdBroker takes on the administration of his AdBroker account for the Publisher. AdBroker shall calculate all accrued commissions of the month that has expired at the end of each month and will credit the pertinent amount to the Publisher account. Amounts on the AdBroker account shall be rounded to 2 internal decimal places so that a proper amount in euros is given.
- 6.3. The Publisher may view his account at any time. In addition, a breakdown of the services delivered is provided to the Publisher with each monthly invoicing, from which he sees the makeup of the commission amount.
- 6.4. The payout of the Publisher account is effected automatically and by bank transfer to the account specified by the Publisher when the account balance has exceeded the minimum amount to be paid out at the time of the invoicing.

The minimum amount to be paid out stands at EUR 25.00 for Publishers with a German bank account; otherwise, it is EUR 250.00. If the transfer is done to a non-German bank account, the costs incurred by the transfer are at the expense of the Publisher.

- 6.5. The payout is done only once the completed declaration on VAT has been received by AdBroker by e-mail or by regular mail.
- 6.6. A payout of the AdBroker account with a balance of under EUR 25 is excluded.
- 6.7. AdBroker reserves the right to delete Publisher accounts and the associated AdBroker accounts of Publishers who did not generate views, clicks, leads or sales over a period of 2 months.
- 6.8. When a Publisher account is deleted, the sum on the account will be paid to the Publisher, insofar as a payment to the account is possible. Sums remaining on the account, insofar as they fall below the sum of EUR 25, will not be reimbursed; instead, they will be offset with the lump-sum operating costs for the deletion of the account, so that the account will be closed with a balance of EUR 0.  
  
The Publisher loses all claims—including claims that might emerge in the future—to possibly still accruing sums and commissions upon the deletion of the account.
- 6.9. Assets on the virtual AdBroker accounts do not yield interest.

## 7. Advertiser accounts

- 7.1. AdBroker keeps a separate (virtual) account (AdBroker account) for each Advertiser. The processing of payments of remunerations due for any advertisement that has been placed is done via this account.
- 7.2. AdBroker takes on the administration of the virtual AdBroker accounts for the Advertiser. AdBroker will calculate the commissions accruing daily of the past day and will subtract the corresponding amount from the Advertiser account. Amounts on the AdBroker accounts shall be rounded to 2 internal decimal places so that a proper amount in euros is given.
- 7.3. The Advertiser has to ensure that his AdBroker account always shows an amount of at least EUR 25.
- 7.4. AdBroker shall inform the Advertiser as soon as the balance on his account falls below the amount of EUR 25 at the time of the invoicing. Subsequently, the Advertiser has to reload the balance in order to guarantee the smooth running of the campaign.
- 7.5. If the account balance of an Advertiser falls below the amount of EUR 25 and the Advertiser fails to reload his AdBroker account at the latest within 7 days subsequent to having been informed by Ad-

Broker, AdBroker is entitled to stop all campaigns of the Advertiser and halt their further delivery until the account has been reloaded.

- 7.6. Should the account balance of an Advertiser fall below the sum of EUR 25 and the Advertiser fail to reload his AdBroker account at the latest within 30 days subsequent to having been informed by AdBroker, AdBroker is entitled to delete the account and the campaigns of the Advertiser. Amounts remaining on the Advertiser account, insofar as they fall below the sum of EUR 25, will not be reimbursed; instead, they will be offset with the lump-sum operating costs for the deletion of the account, so that the account will be closed with a balance of EUR 0.
- 7.7. Should the account balance of an Advertiser fall below the sum of EUR 0, AdBroker will stop the delivery of the Advertiser's campaigns without prior warning and wait with further delivery until the account has been reloaded.

If the Advertiser in this case fails to have his account reloaded within 30 days after the shortfall, AdBroker is entitled to delete the Advertiser account and charge the Advertiser the commissions that might have accrued up to the deletion of the account.
- 7.8. In principle, the repayment of the amount on the account is only possible for Advertisers if the account balance shows a sum of more than EUR 25. If this is not the case, the sum will not be reimbursed; instead, it will be offset with the lump-sum operating costs for the deletion of the account, so that the account will be closed with a balance of EUR 0.
- 7.9. Assets on the virtual AdBroker accounts do not yield interest.
- 7.10. AdBroker is free to allow for exceptional regulations for individual Advertisers, which contain the invoicing of the campaign according to an agreed campaign period or campaign volume. The principle that all services are rendered exclusively against prepayment (at least 50% of the expected campaign amount) applies to all new customers.

## 8. Types of booking and booking costs

- 8.1. Campaigns may be booked immediately by the Advertiser via a market place.
- 8.2. Alternatively, the Advertiser may initiate an auction and trigger a booking after the auction has been completed.
- 8.3. The Advertiser bears the costs for the booking, which will be posted either in the market place or the auction procedure.
- 8.4. The campaign costs result from the amount specified by the Publisher, plus a commission for AdBroker.
- 8.5. The invoicing of the campaign is done on the basis of one of the following procedures:
  - a. Commission, views: The Advertiser pays a predetermined amount per display of an advertising medium, which belongs to the campaign of the Advertiser.
  - b. Commission, clicks: The Advertiser pays a predetermined amount per forwarding of a visitor to the Web site of the Advertiser. The forwarding of the customer is usually done by one click on one of the advertising media of the Advertiser.
- 8.6. A campaign is defined by the following parameters:
  - Campaign costs
  - Scope of delivery (e.g. entire network[s], individual channels or certain Web sites)
  - Advertising form(s) (e.g. banners, pop-ups, layers, banners and pop-ups, pop-ups and layers and so forth)
  - Target Web site(s) that is (are) advertised
  - Volume to be achieved (e.g. 10,000 clicks, 1 million pop-ups or unlimited)
  - Special services (e.g. frequency capping, targeting and so forth)
- 8.7. The Advertiser has to ensure that a sufficient amount of advertising media are allocated to the campaign in question at all times. The number of advertising media and formats has to be selected such

that the desired volume is achieved as fast as possible. Which advertising media and formats are required for this purpose can be checked in greater detail with the responsible AdBroker account manager. The advertising media are to be put in the system or delivered to AdBroker, respectively, at least 3 working days before the onset of the campaign.

- 8.8. In addition, the Advertiser has to ensure that the advertising media provided by him comply with state-of-the-art standards in terms of design and technology and inspire the users to click on them. AdBroker will examine the click rate of the advertising media on a regular basis and is entitled to refuse or deactivate advertising media that show a click rate of below 0.1% (1 click with 1,000 displays).
- 8.9. Adbroker's systems are authoritative for the invoicing of the advertising campaign. In the event that the counting systems of a Publisher or Advertiser yields different numbers and there exists a reasonable doubt about the invoicing of AdBroker, the Publisher or Advertiser has to inform AdBroker promptly in order to clarify the issue. A retroactive change of the data counted up to that point is not possible for technical reasons.
- 8.10. The Advertiser is entitled to demand from AdBroker access to the statistics and/or a CSV export of his campaign(s) of the past week (always Monday, for the period of Monday to Sunday). The Advertiser is obligated to examine the statistics on a regular basis, yet at the latest 3 days upon receipt. In the event he identifies deviations between the statistics provided by AdBroker and the values counted by himself, the Advertiser has to inform AdBroker promptly in order to clarify the issue and determine and rectify the origin of differences in the count. Should the Advertiser fail to raise objections against the numbers presented at the latest 2 weeks upon receipt of the statistics from AdBroker, the numbers are considered as accepted by both sides.

## 9. Manipulation

- 9.1. AdBroker will check the accounts and statistics of the Publishers at regular intervals to determine whether possible manipulations are on hand. Any attempt that aims at or results in circumventing the invoicing systems of AdBroker is considered a manipulation; in particular, the artificial raising of view or click counts or the fabrication of false leads/sales.
- 9.2. In addition, any alteration of the codes provided by AdBroker for displaying of the advertising media, irrespective as to its form and purpose, is seen as a manipulation; likewise, the covering, veiling or rendering invisible of advertising spaces and/or the insertion of the advertising spaces in places that are poorly visible (e.g. way at the bottom of a page).
- 9.3. The display of AdBroker advertising spaces on sites other than the one that has been registered is likewise disallowed. If the AdBroker advertisement is to be placed on another site, the site has to be registered in the login area and activated by AdBroker.
- 9.4. Furthermore, the Publisher is not allowed to click on the advertising spaces himself to trigger a lead/sale or to ask others to do so either directly or indirectly.
- 9.5. In the event that a manipulation or an infringement is discovered by AdBroker or the suspicion of a manipulation/infringement is raised, AdBroker will strive to clarify the matter with the Publisher. Should it be confirmed that a manipulation is on hand, AdBroker is entitled to block the Publisher in question and terminate the contractual relationship for cause without notice.

Additionally, a contractual penalty according to Item 11.8. is due. All commissions that have been accrued by the Publisher up to this point shall remain with AdBroker, offsetting the contractual penalty incurred, so that the account balance of the contractual partner will be at EUR 0 and the account can be deleted.

- 9.6. AdBroker reserves the right to take further legal action against Publishers who have been expelled for manipulation.

## 10. Non-competition and anti-circumvention clause

The Publisher is prohibited from concluding agreements on the placement of advertisements on the advertising area(s) with advertisers of AdBroker during the contract period and for 4 months upon termination of the contractual relationship. This prohibition shall apply in particular to advertisers for whom AdBroker has

delivered advertisements on the Publisher's Web site or to information about advertisers whom the Publisher has recruited from the contractual relationship with AdBroker.  
Any culpable breach of this regulation by the Publisher shall incur a contractual penalty according to Item 11.8.

## 11. Warranty and liability, contractual penalty

- 11.1. AdBroker shall operate its service within the framework of its technical possibilities. A warranty of any kind in terms of the Web sites of Publishers and Advertisers cannot be given; nor can the error-free and interruption-free delivery of advertising media be warranted.
- 11.2. AdBroker is liable for damage for infringements of contractual agreements or provisions in these General Terms and Conditions committed by AdBroker or its legal representatives or sub-contractors only in the event that willful intent or gross negligence is on hand. This does not apply to the liability of AdBroker for damage on account of injury to life, limb or health.
- 11.3. AdBroker's liability is in any case limited to the amount calculated for the time of the breach of contract on the basis of the Publisher's or Advertiser's average monthly commissions within the past 6 months, insofar as the damage did not result from the breach of essential contractual obligations.
- 11.4. Furthermore, AdBroker is not liable for possibly missed income or commissions that occurred due to technical or other defects that did not emanate from AdBroker's area of responsibility.
- 11.5. AdBroker does not assume liability for the Web sites marketed by AdBroker or the advertisements placed by AdBroker. Each Publisher is solely responsible for the content of his Web sites; each Advertiser is solely responsible for the contents of his advertisements. The fact that that the recruitment, placement and invoicing is effected by AdBroker does not establish any claims—also not of third parties—against AdBroker or any legal obligations on the part of AdBroker vis-à-vis third parties.
- 11.6. The Publisher exempts AdBroker from the claims of third parties that are based on a breach of duty by the Publisher, on the violation of the rights of third parties and/or a violation of law/breach of contract by the Publisher or his sub-contractors and are asserted against AdBroker.
- 11.7. The Advertiser exempts AdBroker from the possible claims of third parties that emerge from the allegation that his advertisements violate the copyright act, the law against unfair competition, the trademark law or any other regulations for the protection of fair competition and the assets of others or infringe any other applicable law and are asserted against AdBroker.
- 11.8. In the event that the Publisher culpably violates Items 3.14., 4.2., 4.4., 4.6., 10. and/or 11. of these General Terms and Conditions, a contractual penalty amounting to the fivefold of the average income of the last three months before the violation occurred, yet a maximum of EUR 5,000, is due.

In the event that the Publisher does not meet his obligations arising from Item 3.7. in proper form and AdBroker is forced to convert retroactively the invoices already provided to the Publisher, a contractual penalty amounting to EUR 25 per invoice to be converted is due.

In the event that the Advertiser culpably violates Item 5.3. of these General Terms and Conditions, a contractual penalty amounting to the fivefold of the average commissions paid to AdBroker in the last three months before the violation occurred, yet a maximum of EUR 5,000, is due.

The contractual penalty is not offset with possible damages AdBroker suffers due to the breach of contract.

## 12. Contract period and expiration of the contract; termination with notice

- 12.1. The contract is concluded for an indefinite period.
- 12.2. Each contractual party is entitled to terminate the contractual relationship subject to a notice of one week to the end of the month.
- 12.3. In the event of a termination of the contractual relationship between Publisher and AdBroker according to Item 13.2., the payout of the credit balance on hand on the Publisher's AdBroker account according to Item 6., in observance of the limit of EUR 25, shall take place. Commissions that possibly accrue after the time when the termination becomes effective will not be paid out to the Publisher.

- 12.4. The termination of a campaign of an Advertiser does not mean that the collaboration between the Advertiser and AdBroker is terminated. Beyond the termination, the Advertiser can operate or continue other campaigns with AdBroker or apply for new campaigns.
- 12.5. The termination of the Web site of a Publisher does not mean that the collaboration between the Publisher and AdBroker is terminated. Beyond the termination, the Publisher can register other Web sites with AdBroker and have them marketed or apply for new Web sites.

### 13. Termination for cause

- 13.1. Each contractual partner is entitled to terminate the contract for cause. A cause is given in particular, if
  - a. a. the Publisher violates Item 3.8. and/or the Advertiser violates Item 5.3.;
  - b. a breach against Item 9. has been determined;
- 13.2. In the case of Item 13.1., subparagraphs a. and b., the contract can be terminated immediately and without giving notice. In all other cases, the party who terminates the contract has to give the other contractual party the opportunity to set things right by giving adequate notice before declaring the termination.

### 14. Offsetting, retention, transfer of claims

- 14.1. The contractual partner is entitled to the right of offsetting or retention only in the case of undisputed or legally determined counterclaims.
- 14.2. The contractual partner can transfer rights arising from the contractual relationship with AdBroker to third parties only upon AdBroker's prior consent.

### 15. Data protection

**With his registration at [www.adbroker.de](http://www.adbroker.de)**, the contractual partner gives his express consent that AdBroker is entitled to collect from the contractual partner, store in AdBroker's own IT systems and use the mentioned data in compliance with this Item 16. and with due regard to existing data protection regulations as well as other existing regulations, in particular those in terms of competition laws and those for the protection of business and company secrets.

- 15.1. AdBroker collects the following data from contractual partners within the framework of the business relationship:
  - user name, password
  - first name, last name, company
  - address, postal code, city, country
  - telephone, fax, mobile phone, e-mail
  - bank data, tax number, VAT ID
- 15.2. The data collected according to Item 15.1. shall be stored and used exclusively by AdBroker. The use of the data by companies contracted by AdBroker or the transfer of the data to third parties is done only if the contractual partner has given his consent expressly and in a separate statement.
- 15.3. **Furthermore, the contractual partner expressly agrees that AdBroker is entitled to mention the contractual partner in the advertisement or vis-à-vis third parties as a reference address.**
- 15.4. The contractual partner is not allowed to divulge to third parties any data connected with his contractual relationship to AdBroker. This prohibition applies in particular to statistical data, commissions paid, campaigns placed and money transactions.

## 16. Written form

- 16.1. All contractual agreements as well as changes and/or additional agreements between AdBroker and the contractual partner, including the waiver of the written form, require the written form to become effective, unless a form deviating from the statutory written form is permitted on the basis of individual contracts or these General Terms and Conditions. No verbal additional agreements will be struck.
- 16.2. Notifications or communications to contractual partners that are required within the framework of this contractual relationship have to be performed in the written form, unless a form deviating from the statutory written form is permitted on the basis of individual contracts or these General Terms and Conditions.

## 17. Place of fulfillment and place of jurisdiction; applicable law

- 17.1. Place of fulfillment is Berlin.
- 17.2. Place of jurisdiction for all disputes arising from or entailed in the contracts concluded between the contractual partner and AdBroker—including claims arising from torts—is Berlin.
- 17.3. The applicable law is exclusively the law of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

## 18. Final provisions

Should one or more provisions of these contracts concluded between AdBroker and the contractual partner or these General Terms and Conditions be or become inadmissible or ineffective, the legal effectiveness of the contracts or these Conditions shall not be affected. A legally admissible and effective provision that comes closest to the intended economic success of the contractual partners will apply in place of the inadmissible or ineffective provision.

The same shall apply to the closing of any contractual loopholes.