

GENERAL TERMS AND CONDITIONS OF SCOOT MEDIA

Clause 1 Definitions

In these General Terms and Conditions, it is meant by:

General Terms and Conditions:

these general terms and conditions, regardless of the form in which they are made known.

Contracting Party:

the Contracting Party with whom Scoot Media has concluded an Agreement.

Service:

all the activities that are covered by the Agreement or any other legal act in the relationship between Scoot Media and the Contracting Party, also including but not exclusively restricted to the collection and provision of Scoot Media Data, the placement of advertisements, surveys or response forms at Websites and the development and promotion of online games, and all materials and results designated for the Contracting Party.

Scoot Media:

Multi Response Media B.V.

Scoot Media Data:

data covered by the licence which Scoot Media provides to the Contracting Party in the scope of the agreed Service, also including but not exclusively restricted to: e-mail addresses, name, address, residence and telephone data, Lead data or the results of surveys.

Promotional Material:

advertisements, buttons, banners, surveys, response forms, games and other materials to promote the Contracting Party.

Intellectual Property Rights:

all the intellectual property rights and ancillary rights, like copyright, trademark right, patent right, design right, trade name right, database right and neighbouring rights, just like rights on know-how and eenlijnsprestaties (similar performances; EXM-performance that could be protected by an IP-right, but is not).

Lead data:

data of potential customers of the Contracting Party.

Agreement:

the agreement between the Contracting Party and Scoot Media on the basis of which Scoot Media provides a Service to the Contracting Party.

Website:

the agreed website of Scoot Media.

Clause 2 General

- 2.1** These General Terms and Conditions will be applicable to all the quotations and Agreements, concerning the provision of Services and the granting of licences with respect to the Scoot Media Data to the Contracting Party, regardless of the fact whether these were made verbally, in writing, electronically or in any other form.
- 2.2** In connection with the specific nature of the stipulations in the Agreement, the stipulations in the Agreement may differ from those in these General Terms and Conditions. The stipulations from the Agreement will prevail over the stipulations from the General Terms and Conditions.
- 2.3** If one of the provisions in these General Terms and Conditions is null and void or is avoided, the other provisions in these General Terms and Conditions will remain fully in effect.
- 2.4** Once these General Terms and Conditions have applied to the legal relationship between Scoot Media and the Contracting Party, the Contracting Party will be deemed to have agreed on the applicability of the General Terms and Conditions on agreements that have been concluded or that are to be concluded afterwards in advance.
- 2.5** Deviations from the General Terms and Conditions will only be valid if explicitly agreed upon in writing by Scoot Media and the Contracting Party.
- 2.6** Scoot Media will explicitly reject the applicability of any general (purchase) conditions of the Contracting Party.
- 2.7** Scoot Media will have the right to change the General Terms and Conditions. The change will be made known to the Contracting Party via the website of Scoot Media or in any other way. If the Contracting Party does not wish to accept the change, the Contracting Party will have the right to terminate the Agreement, within 14 days after the announcement, as per the date on which the change will enter into force.

Clause 3 Conclusion of the Agreement

- 3.1** All offers and quotations of Scoot Media will be without obligation, unless explicitly indicated otherwise in writing.
- 3.2** All orders placed by the Contracting Party will be binding and cannot be revoked by the Contracting Party. An agreement will be concluded when an order of the Contracting Party has been accepted by Scoot Media or, depending on what comes first, when Scoot Media starts to perform the Agreement. Scoot Media will have the right at any time to refuse an order, for example if this is unlawful or inappropriate.

Clause 4 Performance of Services

- 4.1** For the term and on the basis of the Agreement, Scoot Media will provide the Contracting Party services with respect to, including but not limited to, the compilation and delivery of Scoot Media Data, the placement of advertisements, surveys or response forms at the agreed Websites and the development and promotion of online games, and all the materials and results designated for the Contracting Party.
- 4.2** Scoot Media will exert itself to deliver the Service within the agreed term and in conformity with the agreed specifications. However, all the terms given will only be a

guideline and will never be fatal, unless explicitly agreed upon otherwise in writing.

4.3 Scoot Media will provide the Scoot Media Data to the Contracting Party in the agreed way and on the agreed data carrier.

4.4 If agreed upon in writing, Scoot Media will provide the Contracting Party with an access code and password and any other necessary data, by means of which the Service or the Scoot Media Data will become accessible for the Contracting Party. The Contracting Party will not have the right to allow third parties to use the access code and the password and will indemnify Scoot Media fully against all claims by third parties concerning damage or otherwise, caused by the use of the access code and password of the Service and/or the Scoot Media Data.

4.5 Scoot Media will provide the service on an “as is” basis, excluding any explicit or tacit guarantees, promises or warranties of whatever nature, including (but not restricted to) the exclusion of guarantees regarding the right to (property) rights, sufficient quality or appropriateness for a specific purpose. Scoot Media does not grant:

- that the Service will work uninterruptedly, will be free from viruses and errors and/or defects, and that defects can be remedied;
- that third parties will not use the systems required for the Service in an unlawful way;
- that the Scoot Media Data or Promotional Material delivered in the scope of the delivered Service will be correct and complete, will be free of errors and will be suitable for the purpose for which the Contracting Party wishes to use the data.

4.6 Scoot Media will have the right to decommission the Service (temporarily) or to limit it for example for the maintenance or adjustment of parts of the Service, including but not exclusively limited to the Website or other facilities that are used by the Service, without the Contracting Party having any right to compensation in respect of Scoot Media.

4.7 Scoot Media will have the right to use the services of third parties for the performance of the Service. Furthermore, Scoot Media will have the right to transfer its rights and obligations arising from the Agreement to a third party in the scope of a transfer of its undertaking.

4.8 If in the opinion of Scoot Media, the performance of the Agreement involves additional work, or if the Contracting Party, or any third parties upon the instruction of the Contracting Party, demands or causes additional work (for example if the Contracting Party has provided incomplete/incorrect information), Scoot Media will have the right to charge all the additionally spent time and costs, in some cases also those of third parties, to the Contracting Party.

Clause 5 Licence Scoot Media Data

5.1 If explicitly agreed upon in writing, Scoot Media will provide the Contracting Party with a licence to use the agreed Scoot Media Data for the agreed direct marketing action.

5.2 The licence will be personal, non-exclusive and non-transferable and will exclusively give a right to a single use of the Scoot Media Data. The licence will exclusively contain the powers which have exclusively been granted to the Contracting Party in the Agreement and the General Terms and Conditions; besides that, the Contracting Party will explicitly not be allowed to make the Scoot Media Data partially or wholly public in any way, to multiply, to change or use the Scoot Media Data for any other purpose. The Contracting Party will particularly not be allowed to:

- employ the Scoot Media Data to build, supplement or enlarge an own database or

- to exploit a database or have them exploited;
 - retrieve the Scoot Media Data or re-use them (in the meaning of the database act), different from the agreed purpose, or to provide them in any other way to any third party;
 - use Scoot Media Data for making or drafting selections, prediction models and scorecards;
 - use the Scoot Media Data for telemarketing purposes (including the calling after a mailing) without the explicit written consent of Scoot Media.
- 5.3** The Contracting Party will have the right to lay down positive response on the direct marketing action and use it to its needs and at its own discretion. The Contracting Party will keep informing Scoot Media about any “non-responses”. If as a result of the e-mail marketing the Contracting Party is requested to block, inspect or remove the (personal) data, the Contracting Party will inform Scoot Media about this immediately. Prior to the notification to Scoot Media, the Contracting Party will make an effort to ascertain the identity of the applicant.
- 5.4** The Contracting Party will make all the adequate arrangements of technical and organizational nature to protect the Scoot Media Data from unauthorised reading, change or provision to third parties.
- 5.5** The Contracting Party will not employ the Scoot Media Data in such way that with them the privacy interests of the natural persons included in the Scoot Media Data will be harmed, that with them the operating purpose of the Scoot Media Data as made known by Scoot Media and/or the reputation of Scoot Media will be harmed. With regard to the use of the Scoot Media Data, the Contracting Party will observe the applicable statutory rules regarding the use of the Scoot Media Data.
- 5.6** Scoot Media will have the right to add a number of verification data to the addresses it has made available. If it appears from the verification data that the Contracting Party does not comply with the agreed use, these data will form the full proof of its attributable shortcoming, unless the contrary is proved. By placing an order or accepting addresses from Scoot Media, the Contracting Party will accept that these verification addresses are or will be added and that Scoot Media will perform checks on possible unauthorised use or have them performed.
- 5.7** In the event of acting contrary to provision 5, the Contracting Party will forfeit to Scoot Media (per breach) a unique and immediate fine that is not open to mitigation or set-off of 20 (twenty) times the amount of the fees due by the Contracting Party under the Agreement, and a fine of EUR 5,000 for each day or part thereof that the non-performance will continue, all this without prejudice to the right of Scoot Media to compensation of the damage suffered and to be suffered by it and regardless any other right accruing to it.

Clause 6 Promotional Material

- 6.1** All the promotional material which the Contracting Party wishes to publish at the Website by Scoot Media must meet the agreed (technical) requirements. Scoot Media will have the right to modify these requirements during the term of the Agreement. Scoot Media will inform the Contracting Party of such modification.
- 6.2** Scoot Media will at all times reserve the right to refuse, remove or adapt promotional material, without the Contracting Party being entitled to any compensation. The removal of Promotional Material can take place by Scoot Media without stating the reason or without prior notification.
- 6.3** Scoot Media will have the right, but will not be obliged, to request the Contracting

Party to check the performance of the Agreement, for example by sending samples of the Promotional Material. If Scoot Media, for verification purposes, sends Promotional Material to the Contracting Party, the Contracting Party may pass on changes to Scoot Media within 14 days after the receipt hereof. This is only possible if these changes relate to factual inaccuracies in the text of the Promotional Material (for example the stating of name/address) and/or if data in it do not correspond with the data stated in the Agreement. If the Contracting Party wishes to change Promotional Material after these 14 days, Scoot Media will have the right to charge its standard tariffs. Scoot Media cannot guarantee that all the changes can actually be processed.

6.4 The performance of the Agreement will automatically be approved by the Contracting Party, if the Contracting Party does not raise any objections to it in writing within 14 days after commencement of execution of the Agreement, or within 14 days after the receipt of a verification request by Scoot Media (depending on what comes first).

6.5 Scoot Media will not guarantee that the Promotional Material will at all times meet the agreed specifications or positions and cannot guarantee the colours, the size and the lay-out thereof either.

Clause 7 Assistance by the Contracting Party

7.1 To the extent to which this is reasonably required, the Contracting Party will give any assistance to the performance of the Agreement. The Contracting Party will inter alia timely provide all the data required for the delivery of the Services in the agreed way.

7.2 The Contracting Party will furthermore provide Scoot Media with a written report of the response on the Promotional Material and the direct marketing actions.

7.3 The Contracting Party will guarantee that the data referred to in 7.1 are correct and complete and will warrant that its use of the Services corresponds with the agreed purposes, is not contrary to any rules and legislation applicable in the Netherlands and does not infringe (intellectual property) rights of third parties or is otherwise not unlawful.

7.4 The Contracting Party will refrain from any act, in the broadest sense of the word, that could affect the reputation of Scoot Media, also including its Services. The Contracting Party will indemnify Scoot Media fully against any claims for compensation by third parties with regard to this, and will indemnify Scoot Media also against all costs made in respect of these claims.

7.5 The Contracting Party will not have the right to transfer its rights and obligations from the Agreement to third parties or to make them available to third parties, unless Scoot Media has explicitly granted its written consent for this.

7.6 The Contracting Party will observe all the guidelines provided by Scoot Media or published at the website of Scoot Media regarding the use of the Service.

7.7 The Contracting Party will not be allowed and will not allow third parties to:

- use the Service in an unlawful, illegal or fraudulent way, including, but not restricted to, generating 'clicks' on the Promotional Material in a fraudulent or inappropriate way or let them be generated, for example by the use of robots or other automated searches, and/or the fraudulent use of other optimization services and/or software;
- include hyperlinks as part of the Promotional Material without the permission of Scoot Media.

Clause 8 **Supplementary Stipulations for Agreements for Third Parties.**

- 8.1** If the Contracting Party concludes an Agreement with Scoot Media for a third party, the supplementary stipulations included in this clause will also apply.
- 8.2** Scoot Media will at all times have the right to set supplementary conditions with respect to the acceptance of the Agreement.
- 8.3** Scoot Media will at all times have the right to contact the third party. If for whatever reason it appears to Scoot Media that the third party objects to the Service, Scoot Media will have the right to suspend the performance of the Agreement.
- 8.4** Despite the previous paragraph, the Contracting Party will be fully liable towards Scoot Media for the compensation of the Service agreed on in the Agreement.
- 8.5** The Contracting Party will fully indemnify Scoot Media from any claims for compensation of the third party for whom he concludes the Agreement and will also indemnify Scoot Media from any costs made in respect of these claims.

Clause 9 **Fee**

- 9.1** The Contracting Party is obliged to pay Scoot Media the fees which have been agreed on in the Agreement. All the fees due to Scoot Media will, if not explicitly stated otherwise, be set in euros, excluding VAT and other levies.
- 9.2** The fees may consist of non-recurrent amounts, annual, or otherwise periodical amounts and amounts that depend on the use of the Service or of the scope of the delivered Scoot Media Data.
- 9.3** Scoot Media will have the right to increase the fees during the term of the Agreement. If the increase of the total value of the Agreement amounts to 10% or more and if the Contracting Party does not wish to agree with this increase, the Contracting Party will have the right to terminate the Agreement partially in writing within 14 days after the announcement thereof, and this by the date on which the increase will commence. This right to terminate the Agreement does not apply if the increase is less than 10%.

Clause 10 **Payment**

- 10.1** Scoot Media will charge the amounts due by the Contracting Party by means of an invoice. For the determination of the amount of the invoice, the data from the administration of Scoot Media are guiding.
- 10.2** Scoot Media will at all times have the right to request an advance payment of the fees.
- 10.3** Payment will take place in the way indicated by Scoot Media. Unless another payment term has explicitly been agreed on in writing, payment of the total invoice amount must take place within 14 days after the invoice date.
- 10.4** Any appeal by the Contracting Party to suspension, set-off or deduction will not be allowed.
- 10.5** If the Contracting Party has not paid the invoice within the payment term, the Contracting Party will be in default without any further notice of default. From the default date, the Contracting Party has to pay statutory trade interest, and all the extrajudicial costs made by Scoot Media for the collection of the claim will be

chargeable to the Contracting Party.

- 10.6** Scoot Media will have the right to check the creditworthiness of the Contracting Party. If necessary, the Contracting Party, upon the first request of Scoot Media, will have to provide enough security for the fulfilment of existing and future obligations towards Scoot Media. In such a case, Scoot Media will only deliver the Services after the necessary security has been obtained.

Clause 11 Intellectual Property Rights

- 11.1** The Intellectual Property Rights on the Scoot Media Data and on the Services which Scoot Media provides in the scope of the Agreement, will remain with Scoot Media or with the third party from whom Scoot Media has obtained the right to provide (a part of) these Services to the Contracting Party.

- 11.2** The Intellectual Property Rights on all the other material which the Contracting Party provides to Scoot Media in the scope of the Agreement, will remain with the Contracting Party or with the third party from whom the Contracting Party has obtained the right to provide the material to Scoot Media. The Contracting Party will grant Scoot Media the right to use these materials for the performance of the Agreement.

- 11.3** No provision in the Agreement or the General Terms and Conditions may be used for the full or partial transfer of Intellectual Property Rights to the Contracting Party. The Contracting Party will recognise these rights and will refrain from any form of (in)direct infringement of these rights, under pain of forfeiting the penalty as laid down in clause 5.7.

- 11.4** The Contracting Party will guarantee that the materials provided to it, including but not exclusively limited to the Promotional Material, do not infringe third party rights and that it will have the right to provide these materials to Scoot Media. The Contracting Party will fully indemnify Scoot Media against any claims for compensation of third parties in this respect, and will also indemnify Scoot Media against all costs made in respect of these claims.

- 11.5** The Contracting Party may not remove notices of entitled parties with respect to Intellectual Property Rights. The same will apply to communications that particular information is confidential.

Clause 12 Privacy and Nondisclosure

- 12.1** Scoot Media and the Contracting Party will have the obligation to process data obtained as a consequence of the Service in conformity with the Dutch Personal Data Protection Act and any other applicable rules or self-regulation in the field of data protection.

- 12.2** The parties undertake to observe secrecy regarding all the data received from the other party of which one knows or should know that these are confidential, unless a statutory obligation commands the disclosure of these data. The party receiving the confidential data, will only use them for the purpose for which they have been provided.

- 12.3** The parties will also impose the obligation mentioned in 12.2 on their employees and on third parties engaged by them for the performance of the Agreement.

Clause 13 Liability

- 13.1** Scoot Media will not be liable for damage suffered by the Contracting Party, unless the damage is caused by gross negligence or intent of Scoot Media, in which case Scoot Media will only be liable for direct damage.
- 13.2** The total liability of Scoot Media will never exceed the total of the fee stipulated for the Service in question. If an Agreement with a term of over one year has been concluded, the stipulated fee will be set on the total of fees stipulated for the current year, at the moment at which the failure arises. In no case, the total fee will exceed EUR 2,000 per event, by which a series of events to be considered as one event.
- 13.3** Direct damage exclusively includes:
- the costs which the Contracting Party reasonably had to make to remedy or lift the failure of Scoot Media, so that the performance of Scoot Media does meet the agreement;
 - reasonable costs for keeping the old system of the Contracting Party operational for a longer period, decreased by the savings;
 - reasonable costs to prevent or limit such damage and reasonable costs to establish the cause and scope thereof.
- 13.4** Any liability of Scoot Media for indirect damage, including but not restricted to consequential damage, loss of profits and of turnover, will be excluded.
- 13.5** Scoot Media will not be liable for damage on the side of the Contracting Party that has been caused by third parties, whether they use the Service or not.

Clause 14 Suspension

- 14.1** Scoot Media will have the right to suspend the performance of the Agreement, fully or partially, if the Contracting Party fails to fulfil its obligations under the Agreement, or if Scoot Media suspects that the Contracting Party is acting contrary to 7, 11.4 or 11.5, or has reasonable fear that the Contracting Party cannot meet its payment obligation, without prejudice to any other right accruing to Scoot Media. The suspension will never release the Contracting Party from any payment obligation with regard to Services already delivered by Scoot Media.
- 14.2** As soon as the Contracting Party fulfils the Agreement after all and/or provides enough security to meet its obligations, Scoot Media will lift the suspension.

Clause 15 Term of the Agreement

- 15.1** Unless explicitly agreed upon otherwise, all the Agreements will have an initial term of 1 year. After this, the Agreement will be tacitly renewed for a term of 1 year, unless the Agreement is terminated by one of the parties in writing, ultimately 3 calendar months prior to the consecutive term.
- 15.2** Regardless of all the other rights, the Parties will have the right to dissolve the Agreement fully or partially without judicial intervention and without any notice of default with immediate effect if the other party:
- has applied for a moratorium of payment or this has been granted to it;
 - has been declared bankrupt or a petition for bankruptcy has been filed.
- 15.3** Without prejudice to its other rights, Scoot Media will have the right to dissolve the Agreement with immediate effect, if the Contracting Party does not meet its

obligations from 7, 11.4 or 11.5.

15.4 Termination or dissolution of the Agreement will never release the Contracting Party from any payment obligations with regard to Services already delivered by Scoot Media. Amounts which Scoot Media has invoiced prior to the termination in connection with what it has already performed or delivered in the scope of the performance of the Agreement, will become immediately payable at the moment of termination.

15.5 The stipulations which in their nature are destined to survive the termination of the Agreement will remain in full force after such termination.

Clause 16 Final Stipulations

16.1 Dutch law will apply to the Agreement.

16.2 All disputes arising from the Agreement will be submitted to the competent court in Alkmaar.

Multi Response Media BV has been registered with the Chamber of Commerce of Noordwest-Holland under no. 36044438. These General Terms and Conditions have been filed with the Chamber of Commerce of Noordwest-Holland in Alkmaar on 1 September 2008.