

MEMAIL AFFILIATE PROGRAM CONDITION OF PARTICIPATION (mAPC)

1. Scope; Right to make amendments

- 1.1. memail and the memail Affiliate Program (“**mAP**”) are services of MeMail AG, Friedrichstr. 90, 10117 Berlin (hereinafter: “**memail**”).
- 1.2. For all contractual agreements concluded between memail and memail’s customer (hereinafter: “**Affiliate**”) with due reference to these mAP Conditions of Participation (“**mAPC**”), the following provisions apply exclusively. Any terms of business of Affiliate which deviate here from do not form part of the agreement, unless memail expressly agrees in writing to their application.
- 1.3. memail is entitled to alter or amend these mAPC to the extent this seems necessary and provided the parties involved are not consequently disadvantaged in a manner contrary to the principles of good faith. These mAPC can also be amended as a reaction to new technical developments, changes to case law, the legal situation or other equivalent reasons. Affiliate will be notified in text form in advance of any amendments to these mAPC. Such amendments will be deemed to have been accepted if Affiliate does not expressly object to them, in text form, within six weeks of receipt of the notification. memail will expressly advise Affiliate of this consequence in the notification of the respective amendment(s). In the event of an objection being lodged, memail reserves the right to terminate the agreement. Any amendments which considerably impact the contractual balance between the parties require the express consent of Affiliate.

2. Participation; commercial law and tax law aspects

- 2.1. A participation in the mAP requires a prior online application by the memail customer. Any memail customer may make an application to participate in the mAP via the form provided for that purpose. By sending the completed application, Affiliate is making an offer to participate in the mAP. A contract is only deemed to have been concluded upon express acceptance of that offer by memail.
- 2.2. There is no right to participation in the mAP. memail is free to accept requests or reject them without needing to state reasons or to reject—at a later date—applications which had previously been preliminarily accepted.

- 2.3. We hereby advise that participation in the mAP constitutes a commercial activity even if Affiliate themselves has not actively founded or filed for registration of a commercial entity. It is solely the responsibility of Affiliate to ensure the commercial law and tax law conditions for participation are met, in particular to notify the German Tax Office [Finanzamt] or any other appropriate authority, where necessary, of the commencement of a commercial activity. We also advise that tax is due on any income earned via participation in the mAP and that Affiliate is responsible for ensuring that any requirements in this regard are duly observed.
- 2.4. Affiliate is obliged to inform memail of its tax number or VAT identification number and furnish proof accordingly. Affiliate must also inform memail as to whether they are a small business entity as per Sec. 19 UStG [German Turnover Tax Act] or not and furnish proof accordingly. The settlement of commission (section 10) will only be possible after the proof provided has been duly reviewed.

3. Details of participation in the memail Affiliate Program

- 3.1. The mAP offers registered affiliates the possibility of inviting, by means of an AffiliateID provided by memail and allocated to Affiliate or by means of advertising (e.g. HTML code, advertising banners, text links, videos and images) associated with that AffiliateID (“**Advertising Materials**”), third parties to use memail. Where any contractual agreements concluded between an acquired third party and memail can be attributed to such marketing activities of Affiliate, as recorded against the respective AffiliateID, (“**Referral**”), Affiliate can participate in these successful contract conclusions. In the event that a contract be concluded between memail and the acquired third party for paid memail services and that conclusion of contract can be attributed to a Referral by Affiliate (so-called “**Sale**”), the acquiring Affiliate will receive, under the requirements set out in section 9, a Referral commission depending on the type and value of the contract concluded between the third party and memail.
- 3.2. memail will provide Affiliate with login credentials for the “Affiliate Account Manager” (“**AAM**”), for the duration of the participation in the mAP. Through the AAM, Affiliate can view details of the mAP as well as their statistics, personalize their landing page with images and text, download HTML code (containing links to webpages within the memail website) and advertising banners as well as access tracking codes for coupons and offers etc.

4. Advertising and advertising environment as well as obligations of Affiliate

- 4.1. The Advertising Materials and the AffiliateID provided to Affiliate by memail may only be used on Affiliate's own websites, for which Affiliate themselves are responsible and to which Affiliate has complete access ("**Advertising Sites**"), or sent via email. An inclusion of the Advertising Materials and the AffiliateID in third party websites as well as newsgroups, chat rooms, forums, guest books, messaging systems, banner networks etc., where Affiliate does not have complete access to the content they publish, is not permitted.
- 4.2. Affiliate has sole responsibility for the Advertising Sites and must ensure, for the term of this agreement, that the sites are operated lawfully and that no content can be accessed via those sites which violate applicable law, accepted principles of good morals and/or third party rights. In particular, the Advertising Sites have to be and remain free of the following and may not contain any links to third party websites which include:
- content which is racist, sexist, seditious, discriminatory, extremist, pornographic or which glorifies violence
 - calls to/support for criminal acts or other rights infringements
 - statements which violate personality rights or which are defamatory, slanderous, libelous, harassing etc.
 - content which infringes third party rights (in particular violations of copyright law, trade mark law, patent law, design law etc.)
 - content which violates advertising law (e.g. the German Advertising of Medicines Act [Heilmittelwerbegesetz]) or the German Act Against Unfair Competition [Gesetz gegen den Unlauteren Wettbewerb].
- 4.3. The design of the Advertising Sites must be such that the impression is avoided that memail is responsible for them. In particular, pages from the memail website may not be wholly or partly copied. memail trade marks or logos may only be used in direct connection with the Advertising Materials and may only be displayed with reference to the mAP; any use of the trade marks and logos beyond that is not permitted.
- 4.4. An inclusion of the Advertising Materials and the AffiliateID in direct email communications with third parties is only permitted if and to the extent that the relevant statutory requirements are met, in particular according to the applicable advertising law, competition law and data protection law provisions. It is the sole responsibility of Affiliate to assess whether and to what extent the law

requires the consent of the recipient prior to the sending of such email communications and whether the statutory requirements for such email communication are met.

- 4.5. Affiliate must remove Advertising Materials from the Advertising Sites without delay if memail requests this.

5. Prohibited acts

- 5.1. Affiliate may not misuse the Advertising Materials, AffiliateID or the mAP nor manipulate the mAP or the associated data collection and processing. In particular, all forms of “affiliate fraud” (cookie spamming, forced clicks, affiliate hopping etc.) are prohibited.

- 5.2. No attempts may be made, alone or with the help of third parties, to generate sales using abusive practices.

- 5.3. The transmission or use of “interstitials”, “parasiteware”, “parasitic marketing”, “shopping assistance applications”, “toolbar installations and/or add-ons”, “shopping wallets” or “deceptive pop-ups” and/or “pop-under”, in the time between when the Advertising Materials which lead to memail are clicked on and the memail website is completely left, is prohibited. “Parasitic marketing” means, in particular, the use of applications which

- inadvertently or intentionally overwrite the tracking cookies for the affiliate marketing without the visitor first having actively clicked a link within the Advertising Materials;
- intercept search requests in order to divert the data traffic and thus display popups or set or overwrite tracking cookies, whereby a visitor would, under normal circumstances have arrived at the same destination using the search results displayed by the usual search engines;
- set tracking cookies by displaying the memail website in iFrames, set hidden links or generate automatic popups which open the memail website;
- lead to text on websites which do not completely belong to the owner of the application in order to thus carry out context-related marketing;
- prevent, remove or replace advertising banners.

- 5.4. The use of the signs “memail”, “memail.com” or “www.memail.com” including misspellings or other variations in the scope of pay-per-click campaigns as keywords in keyword marketing is not permitted.

- 5.5. Affiliate undertakes not to make any attempt to override, circumvent or otherwise

disable any security measures employed by memail or the mAP tracking system. In addition, Affiliate undertakes not to damage the memail system by way of electronic attacks (viruses, worms, trojans, brute-force attacks, spam etc.).

6. Landing pages and AffiliateID

- 6.1. memail will give Affiliate the opportunity to set up a landing page which can be personalized by Affiliate using texts, photographs, images, videos etc. (**“Landing Page Content”**)
- 6.2. As far as the design of the landing page and the Landing Page Content is concerned, sections 4.2, 4.3 and 5 apply accordingly. memail is entitled to remove Landing Page Content or to block a landing page entirely in the event that indications exist that they violate sections 4.2, 4.3 or 5 and/or in the event that third parties demand that memail remove content.
- 6.3. The AffiliateID provided to the user, which is at the same time part of the internet address of the landing page (e.g. memail.com/myID), may be personalized by the user. It must not infringe any third party rights (in particular no trade mark or other designation rights) and must not contain any of the content set out in section 4.2. memail is entitled to block the AffiliateID if indications exist that it infringes third party rights or contains content set out in section 4.2. The AffiliateID may not be based on system sub-directories of memail nor contain terms which are typically used as names of sub-directories for internet sites (e.g. order, signup, register etc.). memail reserves the right to reject individual AffiliateIDs and to request that the user chooses a different AffiliateID.

7. Violations of sections 4, 5, and 6; right of indemnity

- 7.1. In the event that Affiliate violates one of the obligations arising from sections 4, 5 and 6 above, this shall constitute direct grounds for immediate termination of the contractual agreement by memail. In cases of suspicion, memail is also entitled to block Affiliate’s mAP account.
- 7.2. Affiliate hereby indemnifies memail as well as employees and representatives of memail from all claims of and loss or damage suffered by third parties which can be attributed to a violation of the obligations arising from sections 4, 5 and 6. Moreover, Affiliate shall reimburse memail all costs which memail, its employees or representatives incur as a result of third party action taken against them. This shall also include reimbursement of costs for due and proper legal defense against such claims.

8. Rights of use

- 8.1. memail hereby grants Affiliate a non-exclusive, non-transferrable right to reproduce, distribute and publish the Advertising Materials as well as memail signs, MEMAIL and the memail logos, solely in the scope of this agreement and for the duration of the participation in the mAP. Any use beyond that, in particular use without any connection to the mAP, is generally not permitted.

9. Commission

- 9.1. In order to record (“**track**”) the Referrals as relevant for the calculation of the commission, the Advertising Materials made available by memail and the AffiliateID must be used as described in the AAM. Otherwise, no commission can be attributed.
- 9.2. Affiliate will receive a commission payment from memail dependent on successful sales and based on the following requirements:
- A sale with a third party is completed (conclusion of contract for paid services as per memail T&Cs), which can be attributed to the Referral by Affiliate; and
 - the sale as well as the related Referral have been tracked by memail via cookies; and
 - the acquired third party has paid in full for the service ordered, has not cancelled/revoked the declaration of conclusion of the sale within the cancellation/revocation period and has not later cancelled the sale;
- 9.3. A proper tracking of the Referral requires that both Affiliate and the acquired customer allow memail to store and read out cookies on their respective end devices and that the cookies set by memail are not deleted up to the time of settlement of the commission. Memail has no influence over this. In the event that Referrals are not properly tracked due to the blocking of cookies or that the cookies are deleted, there will be no right to commission.
- 9.4. If the acquired third party does not pay for the services ordered, cancels/revokes the agreement or cancels the payment after it has been made (“**Rescission of Contract**”), no commission will be due. Rescissions of Contract which occur later than eight weeks after payment by the acquired third party will have no influence on the commission becoming due.
- 9.5. The amount of the commission is dependent on the product and the volume of the sale. The details can be found in the AAM. The conditions which can be viewed there, as amended from time to time, apply. memail reserves the right to amend the conditions; amendments in respect of the amount of the commission will only apply to sales which

occur after notification of the respective amendment. All commission amounts are inclusive of VAT to the extent VAT is due (in this regard, see also sections 10.4 to 10.6).

- 9.6. No commission shall be due if the Referral is made in breach of these mAPC, in particular in breach of sections 4, 5 and 6.

10. Settlement of the commission

- 10.1. The settlement of commission due will be effected solely by means of credit to Affiliate's memail account. Affiliate may have the commission paid out or use it for ordering paid memail services. Affiliate may view their account balance at any time in the AAM.
- 10.2. Commission can only be paid out once a minimum balance has been reached, the amount of which is set out in the AAM. The commission will be paid out, using the payment method chosen by Affiliate, within four weeks of the respective request. Any transaction costs associated with the paying out of the commission (transfer fees, PayPal fees) shall be borne by Affiliate; memail is entitled to retain such costs when making commission payments.
- 10.3. Affiliate must check any commission statements and payments without delay and inform memail by email of any objections. Objections raised later than four weeks after the respective commission statement has been produced will not be considered. A request for pay out of the commission or conversion to a voucher for use in ordering paid memail services will be regarded as acceptance of the respective commission amount.
- 10.4. Insofar as Affiliate is based in Germany and is not a small business entity, the settlement of the commission will indicate the VAT due. If the small business entity is based in Germany and has provided proof of their small business status, no VAT will be due.
- 10.5. Insofar as Affiliate is based outside Germany but within the European Union and possesses a valid VAT identification number, the VAT will not be indicated ("reverse-charge procedure"), provided Affiliate has already notified memail of their VAT ID number and furnished proof thereof.
- 10.6. To the extent Affiliate (a) is based within the European Union and does not possess a valid VAT ID number or (b) is based within the European Union but has not notified memail of their VAT ID number or furnished proof thereof, the VAT will be indicated when settling the commission due.
- 10.7. If Affiliate is based outside the European Union, the VAT will not be indicated.

11. Liability

- 11.1. memail will be liable without limitation vis-a-vis Affiliate in the case of intent and gross negligence, in the event of failure to supply warranted properties or in the event of injury to life, limb or health.
- 11.2. In the case of simple negligence, memail shall be liable, except in cases of injury to life, limb or health, only for loss or damage arising from a not inconsiderable violation of an essential contractual obligation. Essential contractual obligations are all obligations which must be met to enable the due and proper performance of the contractual agreement, the violation of which jeopardizes the achievement of the purpose of the agreement and the observance of which Affiliate is entitled to rely on. In that case, the liability is limited, however, to compensation for damage or loss which can typically be foreseen in this type of transaction.
- 11.3. The limitations of liability which follow from the above paragraphs also apply in the event of breaches of obligations by or to the benefit of persons, for whose actions memail bears responsibility under the relevant statutory provisions. They do not apply in cases where memail has maliciously concealed a defect, or has provided a guarantee for the quality of the goods nor do they apply for claims according to the German Product Liability Act [Produkthaftungsgesetz].
- 11.4. Liability for any other loss or damage is excluded.

12. Term and termination, blocking

- 12.1. The agreement is concluded for an indefinite term and may be duly terminated by either party at any time without notice, in writing or text form (e.g. by email). The right to extraordinary termination for good cause remains unaffected. The termination shall be valid immediately upon receipt by the respective other contracting party.
- 12.2. In the case of the termination of the agreement, Affiliate shall immediately lose the right to use the Advertising Materials and the AffiliateID. Affiliate must immediately remove all Advertising Materials, links and other references to memail and/or the mAP from the Advertising Sites.
- 12.3. Any Referrals tracked to Affiliate's AffiliateID after the termination takes effect will no longer be attributed to Affiliate and will not lead to any commission obligation. Once the termination comes into effect, any claims to commission which had arisen up to that point will cease to exist; these must have been asserted against memail prior to the termination taking effect.

13. Confidentiality

- 13.1. All information and documents, in particular concerning business processes, commercial relationships and business related, technical and financial information of the contracting parties which are marked as confidential or whose confidential nature is evident from the attendant circumstances and which are disclosed to the respective other party must be handled with strict confidentiality by the receiving party. Such information may only be passed to third parties after prior written consent of the disclosing party.
- 13.2. This does not apply to confidential information (a) which was demonstrably already known to the recipient prior to conclusion of the agreement or became known to the recipient via a third party after conclusion of the agreement without violation of any confidentiality agreement, statutory provision or order of a public authority; (b) which was public knowledge at the time of conclusion of the agreement, provided this was not as a result of a violation of this agreement; and (c) which must be disclosed on the basis of statutory obligations or upon the order of a court or a public authority.
- 13.3. This obligation will remain in force for a period of two years after termination of this agreement.

14. Online dispute resolution and consumer arbitration bodies

- 14.1. The European Commission platform for online dispute resolution (ODR) can be found at: <http://ec.europa.eu/consumers/odr>.
- 14.2. memail is neither legally obliged nor willing to participate in a dispute resolution procedure before a consumer conciliation body.

15. Final provisions

- 15.1. The language of the agreement is English.
- 15.2. The user may only transfer the rights and obligations under this agreement to a third party after prior consent of memail in text form.
- 15.3. All agreements between memail and the user will be governed by German law with the exclusion of the UN CISG. The statutory provisions regarding the limitation of the choice of law and the applicability of mandatory provisions, in particular in the country in which the user, as a consumer, has their habitual residence, remain unaffected.
- 15.4. Insofar as the user is a businessperson, a legal entity under public law or a special fund under public law, the place of jurisdiction for all disputes based on contractual

relationships between memail and the user is Berlin.

- 15.5. In the event of individual points being legally ineffective, the remaining parts of the agreement shall remain binding. The ineffective points shall be replaced by the relevant statutory provisions to the extent such provisions exist. To the extent this results in unreasonable hardship for one of the contracting parties, the agreement shall be deemed ineffective in its entirety.

Berlin, 27 February 2020