

## Terms and conditions

### 1. Scope and applicability

- 1.1. The following General Terms and Conditions are part of all contracts with

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Local Court of Cologne HRB 54825  
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- hereinafter referred to as the List Broker -  
for utilisation of the right to use data, in particular addresses, as well as the execution of advertising mailings and related additional services.
- 1.2. Ancillary agreements and deviating agreements must be expressly agreed. In addition, the Quality and Performance Standards for Target Group Marketing and the current commercial practice of the Competence Centre on Target Group Marketing of the German Dialogue Marketing Association (Deutscher Dialogmarketing Verband e.V., hereinafter referred to as "DDV") shall apply where business between list brokers is concerned.
- 1.3. Any terms and conditions of business of the contracting party that conflict with or deviate from the following provisions shall not apply. They shall also apply exclusively if the List Broker performs the service unconditionally in the knowledge of terms and conditions of the contracting party which conflict with or deviate from the following terms and conditions, or if the client declares that it only wishes to enter into the contract on the basis of its own terms and conditions.
- 1.4. The following general conditions apply only to companies within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch, hereinafter referred to as "BGB").

### 2. Definitions

- 2.1. *Owner of the addresses* = owner of the database with the right of disposal (including of the data used for inserts); commissioning company and company responsible under data protection law.
- 2.2. *Database* = the data designated for use by the owner of the addresses, generally personal data, such as postal address, year of birth and other group attributes such as date of purchase or product group.
- 2.3. *Address group* = address lists = addresses and/or other data selected by group attributes.
- 2.4. *Inserts* = catalogue inserts, package inserts, media inserts or other commercial communication of the advertiser that are to be combined with mailings or other advertising of the owner of the addresses.
- 2.5. *Advertiser* = buyer or user of the rights to the database for contractually agreed commercial communication.
- 2.6. *List broker* = company commissioned to market the database and the purchaser and, in certain

- circumstances, seller of the rights to use the database.
- 2.7. *Control address* = data invented for control purposes (e.g. addresses, email, personal attributes) which is inserted into the database.
- 2.8. *Data subjects* = identified or identifiable natural persons in the database to whom information is assigned; data subjects within the meaning of the the General Data Protection Regulation ("GDPR").
- 2.9. *Customer* = purchaser of the rights of use, may be identical with advertisers or may be another list broker, agency or other third party
- 2.10. *DDV* = German Dialogue Marketing Association, Hahnstraße 70, 60528 Frankfurt, [www.ddv.de](http://www.ddv.de).
- 2.11. *Quality and Performance Standards for Target Group Marketing* = DDV's quality and performance standards for the Competence Centre for Target Group Marketing within the DDV (hereinafter referred to as "Competence Centre for Target Group Marketing") contain self-declarations of commitment on the handling of data in the course of the marketing of target groups.
- 2.12. *DDV Declaration of Commitment* = the "DDV Rules for Contract Processing", in conjunction with the individual contract, are intended to ensure compliance with data protection regulations pursuant to Article 28 GDPR.
- 2.13. *Individual contract / address contract* = contractual agreement between the owner of the addresses and the List Broker for the transfer of the rights of use for the entire database or parts thereof for a specific use by an advertiser.

### 3. Commission by the owner of the addresses, granting of rights of use

- 3.1. By commissioning the List Broker to market a database, the owner of the addresses grants the List Broker the right to use the database for the purpose of advertising activities and other commercial communication in compliance with its data sovereignty under data protection law, in particular the authority under data protection law which it retains, and to grant this right to advertisers directly or indirectly via sale to third parties (e.g. other list brokers, advertising agencies).
- 3.2. The owner of the addresses guarantees the List Broker that it is entitled to transfer rights of use in respect of the database to advertisers for advertising purposes and to enable the use of the database by transmitting and/or otherwise making the data accessible to third parties. Conditions and limitations of the owner of the addresses in respect of specific processing are unaffected by this.
- 3.3. Restrictions on the scope of use, e.g. in the form of conditions and limitations, as well as special requirements for consultation, in particular further approvals to be granted by the owner of the addresses, shall be specified in the individual contract.
- 3.4. The owner of the addresses undertakes to inform the List Broker about the database, in particular about the quality (origin/method of obtaining the data, from when it dates, buyer/interested party addresses, compiled addresses, deliverability rate, etc.). The owner of the addresses permits the List Broker to use the information made available to it in this regard in full and without restrictions for the purpose of advertising its services in connection with the database.

- 3.5. Any estimates made by the owner of the addresses must be to the best of its knowledge and are to be identified as such to the List Broker.
- 3.6. The owner of the addresses shall remain entitled, within the scope of the considerations required under data protection law, to reject a measure proposed by an advertiser without any obligation to disclose the criteria used in the consideration, or to impose any conditions or restrictions on its consent which it considers necessary in the interests of the parties concerned.
- 3.7. Specifications, declarations and approvals also apply to the use of subsets of the database. Approvals granted by the owner of the addresses for subsets also apply to the sale of the remaining content of the database to the same purchaser for the same advertising material and processors, but only for one postal delivery date to be agreed. The foregoing shall only apply to the extent that no material changes in the circumstances occur in the period following approval and use by the advertiser (e.g. changes in the legal permissibility of the advertising, changes in the right of disposal over the data).
- 3.8. If the List Broker cannot fulfil the individual contract with its customer in full or at all, and if the cause is a breach of contract and/or a decision and/or an action not carried out in time or at all by the owner of the addresses, the List Broker shall be released from its obligation to provide services to the owner of the addresses for the usage fee in this regard. This shall not apply to the extent that the List Broker is responsible for the non-performance (hereinafter referred to as a case of non-performance).
- 3.9. The same shall apply in the above case of non-performance in respect of the reciprocal performance obligations between the List Broker and its customer to enable the use granted and the customer's obligation to pay the remuneration.
- 3.10. Further claims, in particular in the case of non-performance following approval of the individual contract, remain unaffected.
- 3.11. The owner of the addresses shall indemnify the List Broker from all claims for payment by third parties which are brought against the List Broker in the event of non-performance and for which the List Broker is not responsible, in particular those of the advertisers and/or other purchasers of the rights of use, and shall assume the costs of the List Broker required for legal advice and defence by way of indemnification.

#### **4. Processing, control**

- 4.1. The processing, use, storage and transmission of data, in particular its use for advertising purposes, may only be processed in accordance with the statutory provisions, in particular the General Data Protection Regulation (GDPR), in a lawful manner, in good faith and in a manner that is comprehensible for the person concerned and compatible with the original collection purposes. In the event that the List Broker obtains direct access to the database (e.g. in the form of a trust database; this also applies to access to encrypted data without direct access), either for processing or for forwarding to service providers, it shall comply with all obligations as a processor required by data protection law in accordance with Article 28 GDPR.

The List Broker has signed up to the DDV Declaration of Commitment and undertakes, especially with regard to the owner of the addresses, to comply with the relevant provisions of the current DDV Declaration of Commitment in the case of processing and only to allow direct access to the database to such persons who have also signed this declaration and have undertaken to the responsible body to comply with it and who are listed along with their identity as authorised processors in the individual contract or in other written agreements with the owner of the addresses.

- 4.2. The List Broker is obliged and authorised to comply with lawful instructions in the course of processing. In all other respects it may object. It shall inform the owner of the addresses immediately in the event of an objection. The List Broker shall be entitled to refuse processing services for as long as the legal requirements for proper data processing and use are not fulfilled or proven and shall be entitled to withdraw from the respective contract after a reasonable deadline passes without success.
- 4.3. The List Broker shall only resell the rights of use to such list brokers, other third parties or advertisers who have also made an undertaking in accordance with the above provision. If the purchaser of the rights of use does not receive access to the database, it shall suffice if it has undertaken to only exercise the rights of use or to entrust third parties with the processing of the database if they have in turn made an undertaking to the owner of the addresses in accordance with the above provision in section 4.1. For this purpose, the List Broker shall either transmit the information relating to the identity of the customer and for the ascertainment of the database concerned to data processing service providers and other processors and/or require purchasers of the rights of use to forward them accordingly with reference to the DDV Declaration of Commitment on "Rules for Processing" to be signed up to.
- 4.4. The owner of the addresses hereby undertakes to the natural and legal persons specified in the individual contract who have committed themselves to it in the context of the fulfilment of the contract in accordance with the DDV Declaration of Commitment to comply with the data protection obligations to which it is subject under statutory provisions and the obligations imposed on it in the DDV Declaration of Commitment for Order Processing applicable at the time of the conclusion of an individual contract.
- 4.5. In addition, the parties agree as a further basis for processing on demand by either party to enter into a separate contract (processing contract) or to consult and document another legal instrument under EU or Member State law binding the List Broker in relation to the owner of the addresses and in which the subject matter and duration of the processing, the nature and purpose of the processing, the types of personal data, the categories of data subjects and the obligations and rights of the owner of the addresses are set out and which regulates all other matters which must be agreed or regulated by law.
- 4.6. Any necessary authorisations of the owner of the addresses in accordance with Article 28(2) GDPR for the engagement of additional processors shall be deemed to have been granted with confirmation of the individual order, provided that there is a list specifying (i) the advertiser, (ii) the processors and any intermediaries, insofar as they are processors, along with their identity and (iii) information on the

submission of a current DDV Declaration of Commitment (iv) the amount of data and an identifying description of the database concerned (clear and meaningful list and selection names; categories of the data subjects or recipients) and (v) the purpose, time of use or duration and the communication activity (type of processing) for which the data is to be used.

- 4.7. Services which the List Broker performs as a processor are not included in the remuneration of the user fee outside of express agreements in this regard and are subject to separate payment.
- 4.8. The owner of the addresses guarantees that it is authorised to have the commissioned processing of the database carried out and that the nature and purpose of the processing does not infringe any rights of the data subjects. The List Broker points out that the transmission of personal data should be secured (e.g. by appropriate encryption; attachments to emails which are only in password-protected file attachments are not secure). Liability for data protection violations in this context (e.g. violation of data secrecy or use of the data by unauthorised third parties) lies with the party who carries out the transmission itself or through third parties without adequate security.
- 4.9. Insofar as the List Broker or the advertiser obtains information on the data to be used or its further processing, knowledge of which is necessary for compliance with the legal obligations of the owner of the addresses, it shall inform the owner of the addresses without delay and support the owner of the addresses in particular in the fulfilment of legal monitoring and information obligations by means of appropriate contractual provisions and technical precaution in the involvement of third parties. This applies in particular in respect of the owner of the addresses' legal obligation to implement technical and organisational measures necessary to ensure compliance with the data protection provisions of the German Data Protection Act (Bundesdatenschutzrecht, hereinafter referred to as "BDSG") or GDPR and to comply with information and notification obligations. The owner of the addresses, the list broker and advertiser shall support each other in the fulfilment of data protection requirements, in particular in the fulfilment of legal obligations to provide information, by providing appropriate information without delay.

## **5. Contractual relationship with the customer**

- 5.1. The customer acquires the rights of use limited to the use authorised by the owner of the addresses in each individual case.
- 5.2. In a case of non-performance (see section 3.8), the List Broker shall be released from its performance obligations to the customer to this extent. In this case, the customer shall be released from its obligation to pay the remuneration. Section 3.10 shall apply accordingly. The owner of the addresses is in particular entitled, within a reasonable period of time following submission of the planned activity and within a reasonable period of time following submission of the planned activity, to reject it without the obligation to disclose the criteria used in the consideration or to attach to its consent conditions which it considers necessary in the interest of the parties concerned. If an owner of addresses rejects a planned use in general, the

rejection shall upon receipt by the advertiser be deemed to be a permissible withdrawal of the List Broker from the individual contract concerned. Furthermore, the advertiser shall be entitled to withdraw from the individual contract with the List Broker if it does not accept the owner of the addresses' conditions in this respect which go beyond the conditions and restrictions known at the time the contract was entered into. Withdrawal shall be declared within a cut-off period of one week following receipt of the conditions.

- 5.3. If the purchaser of the rights of use is granted access to the database, it undertakes to the owner of the addresses to comply with the provisions of the DDV Declaration of Commitment "Rules for Order Processing" in effect at the time of conclusion of the user agreement and to allow only such persons direct access to the database who have also signed this declaration and have undertaken to the responsible body to comply with it and who are listed along with their identity in the individual contract or in other written agreements with the owner of the addresses.
- 5.4. If the purchaser of the rights of use does not obtain access to the database, it undertakes to sell the rights of use only to such list brokers, other third parties or advertisers who have also made an undertaking in accordance with the above provision, or only to exercise the rights of use or entrust third parties with the processing of the database who have in turn given an undertaking to the owner of the addresses in accordance with section 4.1.
- 5.5. The offers submitted by the List Broker are subject to change without notice, provided they have not become the subject of a binding agreement. The contract shall come into effect upon confirmation of the order by the List Broker.
- 5.6. If the List Broker or the owner of the addresses does not yet have the necessary information (advertising material, processors, etc.) for the data protection check at the time of the order confirmation, the List Broker can make the effectiveness of the order confirmation dependent on conditions that still have to be fulfilled.
- 5.7. With authorisation, neither the owner of the addresses nor the List Broker assume any liability for the legal admissibility of the planned use of the data, particularly in respect of competition law. The advertiser has sole responsibility in this regard and shall indemnify the owner of the addresses as well as the List Broker from any claims by third parties in this respect. The indemnification also includes the necessary court and legal defence costs.
- 5.8. The above provision does not affect any liability of the List Broker due to special obligations arising from the Quality and Performance Standards for Target Group Marketing or from explicit warranties.

## **6. Prices, terms of payment**

- 6.1. In the contractual relationship between the owner of the addresses and the List Broker, the prices agreed in the individual order or other framework agreements (e.g. List Management Agreement) shall apply in each case for the rights of use (usage fee) and other services. In the contractual relationship with customers, the prices in the order confirmation of the List Broker shall apply to the respective contract. If services are agreed without a separate price agreement, the prices in the current price list of the List Broker shall apply (for data usage, the usage fees stated in the data cards shall apply), unless the

- contractual partner proves that the services should be provided without separate invoicing.
- 6.2. Unless otherwise stated, the prices are net prices plus the statutory value added tax applicable at the time, with each group of addresses being calculated separately.
- 6.3. Due to regular changes in inventory as a result of additions and disposals, the address or data quantities stated in the offers, price lists (data cards) and order confirmations are only approximate values. For all orders for the acquisition of rights of use to databases, the respective number of units available is therefore deemed to have been ordered with a maximum deviation of up to 5% in line with customary practice; the price to be paid shall change according to the excess or short delivery, unless the deviations are not reasonable for the advertiser in the particular case.  
Additional costs, such as for selections or data transmission or agreed consultancy services, will be charged separately.
- 6.4. The owner of the addresses shall invoice the List Broker for the transferred right of use and the transfer of the data for use. The List Broker shall invoice the resale of the rights of use and, if applicable, other services to the advertiser or another customer.
- 6.5. In the absence of other agreements, payment is due at the latest upon receipt of payment by the List Broker. The List Broker shall be entitled to withdraw from the order and to reclaim payments from the owner of the addresses, if it does not receive corresponding payments from the advertiser, unless the List Broker is responsible for the failure to pay.
- 7. Acquisition of use and obligations of the advertiser**
- 7.1. Unless otherwise agreed, the usage agreement concluded between the List Broker and the advertiser shall entitle the advertiser, upon payment of the remuneration and authorisation by the owner of the addresses as required under data protection law, only to the specifically defined one-time use of the data made available by the owner of the addresses on the usage date (e.g. mail date) or within an agreed period of time, unless the data has been transferred to the power of co-disposal of the advertiser in accordance with the below provisions (see paragraph 7.8 Individual power of disposal)
- 7.2. Unless other arrangements have been made, the advertiser shall only be entitled, on the basis of the granting of a right of use, to have the following services relating to the data carried out by processors (e.g. computer centre/lettershop, call centre) commissioned by it and previously approved by the owner of the addresses:
- Data conversion/analysis, completion, qualification;
  - Postal validation and correction;
  - Robinson or Nixie adjustments, relocation adjustments
  - Data screening, such as Infoscore, Protector and similar cleaning;
  - Deduplication;
  - Splitting into subsets and reduction;
  - Postage optimisation;
  - Laser printing;
  - Lettershop work.
- 7.3. Additional services, such as optimisation analyses, history files, storage for order entry or storage of temporary files for a period of six months beyond the last agreed data use, transfer to other service providers or other data processing relevant to order data protection law require the written approval of the owner of the addresses.
- 7.4. The advertiser shall refrain from storing, modifying or transmitting the contract data outside of the contractually agreed power of use and instructions, in particular from transmitting or making the data accessible to third parties for any unauthorised use. The advertiser shall also comply with special instructions and individually agreed restrictions (e.g. with regard to the approved advertising material).
- 7.5. The data media or the data may only be stored and processed in the computer centres approved in the individual order or with approved processors. These companies must be suitable for the processing of personal data in accordance with the provisions of data protection law, in particular the GDPR, and must be selected accordingly.
- 7.6. In all other respects, the provisions of sections 4 and 5 shall apply.
- 7.7. The List Broker and the advertiser agree that the owner of the addresses or the List Broker may include a maximum of 50 control addresses per address group in each address delivery, irrespective of the quantity of addresses, in order to monitor compliance with legal obligations and obligations applicable under these Terms and Conditions and separate contractual agreements.
- 7.8. The data of persons who have ordered or otherwise responded to the advertiser's mailing or otherwise reacted to the purpose of the mailing may be used by the advertiser in future without further restriction within the legally permissible framework upon receipt of the order or reaction (individual power of disposal).
- 7.9. The advertiser will not make the data available to third parties in the course of further processing without advising them of the existence of control addresses and compliance with restrictions on use.
- 7.10. The advertiser shall be liable to the List Broker and the owner of the addresses for any fault of third parties commissioned by it.
- 7.11. The use of the personal data provided for the transmission of criminal, youth-endangering or otherwise illegal offers is not permitted.
- 8. Data protection regulations, DDV Robinson list**
- 8.1 In all cases, data may only be processed in accordance with the provisions of the GDPR or other statutory data protection regulations in a lawful manner, in good faith and in a manner that is comprehensible to the data subject and compatible with the original collection purposes.
- 8.2. The parties are also reminded that the data may only be processed in a manner that ensures an adequate level of security for personal data, including protection against unauthorised or unlawful processing and against accidental loss, accidental destruction or accidental damage by means of appropriate technical and organisational measures ("integrity and confidentiality").
- 8.3. The advertiser shall inform the data subjects of their right to object under Article 21 GDPR when first contacting them.

- 8.4. The advertiser shall also ensure that the data subjects receive the necessary minimum information (Article 13(1) GDPR) and any additional information that may be necessary for fair and transparent processing (Article 13(2) and (3) GDPR) at the times provided for by law. This does not apply where and insofar as the data subject already has the information (Article 13(4) GDPR).
- 8.5. The advertiser is advised that the data subject may object to the use and/or transmission of its data and therefore these data must be blocked for these purposes following receipt of the objection or deleted at the request of the data subject. This also applies if the data is not stored by the advertiser itself. In respect of blocking due to an objection, the advertiser is entitled to maintain black lists with data to be blocked.
- 8.6. Furthermore, in the event of a violation of the protection of personal data, reporting and information obligations in respect of the supervisory authority and any data subjects must be complied with (see Articles 33 and 34 GDPR). The advertiser must implement technical and organisational measures to ensure that the rights of data subjects and the reporting obligations in its business area are enforced.
- 8.7. The advertiser is advised that incoming requests for information from the data subject, insofar as they are to be dealt with by the advertiser in accordance with legal requirements and have not been taken over by the List Broker, must be answered promptly, without delay, courteously, in detail and conclusively, as well as any related further questions regarding their personal data.
- 8.8. If the person concerned indicates that they object to the use of their data in whole or in part, or if a violation of the protection of personal data occurs with regard to the database, the advertiser shall inform the owner of the addresses or the List Broker of this immediately in writing (manual or electronic). This shall apply irrespective of whether the violation of the protection triggers a duty to notify the supervisory authorities.
- 8.9. It is generally recommended to check the Robinson list maintained by DDV (see [www.ichhabediewahl.de](http://www.ichhabediewahl.de)) before using data in consumer advertising.
- 8.10. Objections and/or violations of the protection of personal data shall be directed to the contact data specified above in the event of notification to the List Broker. Notifications by email shall be sent to the following specially created email address [datenschutz@liebetrau-listservice.de](mailto:datenschutz@liebetrau-listservice.de).

## **9. Warranty, liability**

- 9.1. The purchaser of the rights of use shall only be entitled to claims for a reduction of the remuneration or withdrawal from the contract if rectification of defects or replacement delivery is not made within a reasonable period of time in a manner that is reasonable for the purchaser or the advertiser, or if subsequent performance has otherwise failed.
- 9.2. The warranty is based on the statutory provisions, insofar as no other provisions have been set out above or below, with the proviso that the warranty period is limited to one year, unless otherwise provided for in section 9.9.
- 9.3. As a rule, the List Broker does not have access to the database. Even if access is possible, it is not

permitted to carry out its own analyses or tests under data protection law without special permission from the owner of the addresses. Unless otherwise specified or evident from the circumstances, information on the database is accepted by the owner of the addresses without checking. The List Broker does not guarantee that an addressee actually exists or actually corresponds to the characteristics (age, sex, purchase characteristics etc.) which are assigned to the data subject, insofar as the characteristic is dependent on the existence and/or on the information and/or an unchanged behaviour of the addressee or any other unchanged circumstance of their person. Since the data material is also subject to constant changes and the data sources may already have provided incorrect information, no guarantee can be given for the exact target group allocation and/or full market coverage of the data offered at the time of use. Due to the various fluctuations in the individual address groups, undeliverable mailings are unavoidable.

- 9.4. The List Broker assumes no liability for the lawfulness of the advertiser's intended data use. This shall not affect the obligations to provide information resulting from the Quality and Performance Standards for Target Group Marketing.
- 9.5. Complaints regarding the quantity delivered or other errors in the data delivered which are recognisable upon immediate, appropriate examination must be reported to the List Broker by the purchaser or advertiser in writing (manual or electronic) immediately after the data has been sent in accordance with the contract and in any case before the data is used further. In cases in which the advertiser does not receive the data itself, the timely notification (in writing, either manual or electronic) of a processing company listed in the individual order shall also be deemed sufficient. If the data is used without complaint, claims based on the fact that the quantity is below or above the number stipulated in the contract or on other errors in the data which are recognisable upon appropriate examination shall be excluded. For merchants, the obligations to give notice of defects according to section 377 of the German Commercial Code (Handelsgesetzbuch, hereinafter referred to as "HGB") shall also apply.
- 9.6. The List Broker shall only be liable, irrespective of the legal grounds, for claims for damages - in particular from unauthorised action, organisational fault, fault when entering into the contract or any other fault-based claims for breaches of duty - if they are based on intent or gross negligence on the scale of fault, or the damage is based on a breach of essential contractual duties the fulfilment of which makes proper execution of the contract possible in the first place and on the observance of which the contractual partner may regularly rely, or claims pursuant to sections 1, 4 of the Product Liability Act.
- 9.7. Provided that there is no intentional or grossly negligent breach of duty, liability is limited to the typical contractual damage that was foreseeable as a possible consequence of a breach at the time of conclusion of the contract according to the known or apparent circumstances.
- 9.8. The maximum damages in the case of simple or minor negligence is limited to a maximum sum of 10,000 euro, unless the foreseeable damage typical for a contract of this kind exceeds this amount.

- 9.9. All exclusions of liability or restrictions of the statute of limitations in this regard shall not apply to damages resulting from injuries to life, limb or health, or in the case of the assumption of a guarantee of quality or fraudulent concealment of a defect within the meaning of section 444 BGB. In these cases, liability shall also apply in cases of simple negligence and/or the statutory limitation periods shall apply. Insofar as liability is regulated above, this shall also apply to the employees, staff, representatives and vicarious agents of the List Broker. In addition, any guarantees of the owner of the addresses or the List Broker shall also remain unaffected by the limitation of liability.
- 9.10. The Advertiser is recommended to carry out test mailings before using large numbers of advertising material.

**10. Contractual penalty undertaking in favour of the owner of the addresses**

- 10.1. The Advertiser undertakes to pay to the owner of the addresses for each culpable violation of the restrictions on the scope of use (see sections 7.1 - 7.5) a contractual penalty amounting to 10 times the fee for the costs of the right of use according to the owner of the addresses' price list, based on the gross quantity of the groups of data supplied for use which contained the data used in violation of the contract. The advertiser is also liable for any fault of its employees (section 278 BGB) and other third parties commissioned by it. The right to assert further claims for damages is reserved.
- 10.2. For the purpose of proving a violation, proof of contact by the advertiser and/or third parties commissioned by the advertiser for business purposes with a single control address which was inserted into the data material used shall suffice, unless the advertiser is able to prove that it received this control address in some other way without breach of contract.

**11. Right to refuse performance, termination without notice**

- 11.1. The List Broker and the owner of the addresses are entitled to refuse services as long as the legal requirements for proper data processing and use are not met or proven. Both parties shall be entitled to withdraw from the respective contract after each unsuccessful request accompanied by a reasonable deadline. If the owner of the addresses withdraws from the contract with the List Broker for reasons which are attributable to the purchaser of the rights of use and/or advertiser, the List Broker shall be entitled to declare its withdrawal to the purchaser of the rights of use without further conditions.
- 11.2. Further claims for damages remain unaffected.

**12. Final provisions**

- 12.1. The place of performance for the services of the List Broker is its registered office.
- 12.2. The law of the Federal Republic of Germany shall apply exclusively. The application of the UN Convention on Contracts for the International Sale of Goods is excluded, even if it has become national law.
- 12.3. The place of jurisdiction for disputes with the List Broker is the registered office of the List Broker, if the List Broker is a merchant and the contractual

partner either has the status of a merchant, or is a legal entity under public law or a special fund under public law. Any mandatory statutory place of jurisdiction shall remain unaffected.

- 12.4. Should one or more clauses of these General Terms and Conditions be or become invalid or should the contract contain a loophole, the validity of the remaining provisions shall be unaffected. In place of the invalid or missing provisions, the relevant statutory provisions shall apply.

Date: 08/02/2019