

# Affiliate Terms and Conditions of Imkey BV

The Terms and Conditions set out below govern the agreement between Imkey BV, registered with the Chamber of Commerce under number 60887737 (hereinafter referred to as: Service Provider) and the other party (hereinafter referred to as: Publisher).

## Article 1. Nature of the Affiliate Service

1.1. Service Provider operates a website that allows third parties ('Visitors') to access information and/or enter into agreements with Service Provider. If Visitors enter into agreements facilitated by the Affiliate Service, this will be with Service Provider rather than with Publisher. Service Provider will indemnify Publisher against any and all claims from Visitors related to the performance of this agreement.

1.2. Publisher will provide services to Service Provider consisting of attracting identified Visitors who wish to enter into an agreement with Service Provider (hereinafter: the 'Affiliate Service'); Service Provider will pay Publisher a fee for this Affiliate Service.

1.3. By entering into this agreement, the parties are not forming a partnership, general partnership, public partnership, joint venture or equivalent partnership. Neither party will be authorised to enter into agreements on the other party's behalf.

1.4. Publisher expressly makes no commitment whatsoever and provides no guarantee whatsoever as regards Visitor numbers, agreements entered into, and the like. Any such numbers cited in Publisher's advertisements must be regarded as approximate only and therefore non-binding.

1.5. On signing the agreement, Service Provider will provide Publisher with a username and password, which will allow it to access a control panel displaying campaigns, promotional materials and any fees/compensation payable. Publisher shall keep the password strictly confidential. Service Provider will not be liable for any misuse of the password and can assume that anything that occurs to the password and username provided to the Publisher will be at the risk and responsibility of Publisher.

## Article 2. Promotion by Publisher

2.1. Publisher will be authorised to carry out promotional activities for the Affiliate Service, which it may do as it sees fit within the provisions of this article. However, promotion is permitted only on websites and other services managed by Publisher.

2.2. In these promotional activities, Publisher will solely use self-produced materials such as copy and images, and not authorised to use Service Provider's materials. This prohibition does not apply to materials designated by Service Provider as promotional and to Service Provider's trade name, brand name and logo. The latter may be used, but in an unchanged format, and Service Provider will be entitled to set reasonable terms for the manner of presentation. Service Provider indemnifies Publisher against any and all third-party copyright claims relating to the promotional materials.

2.3. Publisher will not be authorised to:

- include, in its promotional communications, notices of any kind whatsoever to visitors with that erroneously create the suggestion or impression that Publisher is in any manner affiliated with Service Provider as a dealer or partner,, whereby a display of Service Provider's trade name, brand name or logo for business purposes is excluded from this prohibition,
- carry out promotional activities on websites or services of an illegal nature,
- carry out promotional activities using electronic communication by e-mail, text/SMS or a similar medium ('spam'), even if this were to occur on an opt-in basis,
- display promotional or advertising communications in pop-ups, pop-unders or similar windows or technologies without express written permission,
- display promotional or advertising communications on websites or other media that are of an erotic or pornographic nature,
- display promotional or advertising communications on websites or other media that are of a violent or extreme nature,
- use or operate any trade names, brand names, domain names or service-user names (e.g. names on Facebook, Twitter or other third-party services) containing a brand name or trade name of Service Provider, or that bear a confusing similarity therewith,

- include incitements or incentives of any nature whatsoever with the promotional communications for Visitors to click on the Promotional Materials, or to masquerade as a potential customer to the advertiser in order to raise Publisher's commission,
- invoke (or instruct third parties to invoke) promotional communications by automated means,
- display electronic communications in a manner that is damaging, or could reasonably be damaging, to Service Provider's reputation.

#### 2.4. Publisher's other obligations:

- Publisher will submit the materials it intends to use for the Affiliate Service to Service Provider for prior consent. Service Provider will be authorised to provide instructions that must be followed before it grants its consent.
- All Visitor contact details are the property of Service Provider. Publisher may only use these contact details for personal purposes based on a separate opt-in.
- Publisher is prohibited from transferring the compensation received (or a portion thereof) to Visitors.

2.5. Publisher will not make any statements regarding Service Provider's range of products/services that are inaccurate or that violate relevant laws, e.g. laws relating to comparative advertising, unfair trade practices, or consumer rights.

2.6. If Service Provider has a reasonable suspicion that Publisher is acting contrary to the provisions of this article, it will notify Publisher accordingly. In such an event, Publisher will cease, or continue to cease, the action in question, failing which Service Provider will be authorised to terminate the agreement.

### **Article 3. Compensation for the Affiliate Service**

3.1 Service Provider will pay Publisher for each identified Visitor who actually enters into a paid agreement with Service Provider. There is an option of two standard arrangements for this compensation:

- Service Provider will pay Publisher an amount of 20 per cent of the price (exclusive of Dutch VAT) of the agreement signed by a Visitor for each identified Visitor who actually enters into a paid agreement with Service Provider. The compensation will be payable again each time the agreement referred to in the first paragraph is renewed
- Service Provider will pay Publisher an one-time fee of seven US dollars for each identified Visitor who actually enters into a paid agreement with Service Provider.

3.2. Compensation is payable if the Visitor's first visit can be traced back to Publisher.

3.3. No compensation will be payable if signing of the agreement took place following the date of termination of the agreement. However, compensation will be payable if only the consent referred to in the following paragraph was granted after this date.

3.4. Service Provider will only be entitled to refuse compensation based on valid reasons. If Service Provider fails to refuse a compensation within 30 days, it will be deemed to have been approved. 'Valid reasons' apply in the following events:

- if there is fraud involved
- if the Visitor's contact details are inaccurate
- if the Visitor is already a customer of Service Provider,
- if the Visitor is included on a blacklist of Service Provider
- if the Visitor (e.g. pursuant to e-commerce laws) has terminated the agreement with Service Provider for valid reasons

### **Article 4. Billing and payment**

4.1. Compensation payable will be paid monthly at Publisher's request Service Provider and Visitor. However, the Service Provider will be authorised to suspend payment if the amount to be paid is less than \$200,00

4.2. Service Provider will issue a credit invoice to Publisher. This invoice will be in electronic format.

4.3. The term of payment for the credit note is net 30 days following the date stated thereon.

4.4. If the Publisher operates as a sole trader, Service Provider will be entitled to receive a Verklaring Arbeidsrelatie (Independent Contractor Status Statement, known as 'VAR') prior to making payment.

4.5. If the Publisher is not based in the Netherlands, Service Provider will be entitled to request submission of a VAT number prior to making payment.

## **Article 5. Reporting**

5.1. In order to determine the results, Service Provider will allow Publisher access to a control panel that provides reports on the basis for the compensation.

5.2. The results as reported in accordance with the foregoing paragraph are binding, unless Publisher can provide convincing counterevidence.

## **Article 6. Limitation of liability**

6.1. Service Provider will only be liable to Publisher for direct loss or damage resulting from attributable failure to comply with the agreement.

6.2. No liability shall exist in any manner whatsoever for any indirect loss (including consequential loss, loss of income and profit, loss of data and non-material loss).

6.3. The maximum loss amount for which Service Provider is liable is equivalent to the total compensation that has become due and payable during the three months prior to the time of the loss-incurring event.

## **Article 7. Term and termination**

7.1. This agreement is entered into for an unlimited period of time.

7.2. Both parties will be authorised to terminate the agreement at any time.

7.3. Service Provider will be authorised to suspend its obligations to Publisher if there is a suspicion that Publisher has acted contrary to the agreement, in any manner whatsoever, without the Service Provider being required to pay any compensation whatsoever. No compensation will be payable if the ground arose during the period of the suspension. The suspension will only end after the Publisher has eliminated the ground to the satisfaction of Service Provider.

7.4. Service Provider will be authorised to terminate the agreement with immediate effect if it believes that any of the prohibitions under Article 2 have been violated. In the event of termination in this situation, Publisher will not be entitled to payment of any outstanding compensation whatsoever. Following termination of the agreement, Service Provider will pay the outstanding amount in compensation in accordance with Article 4. If Service Provider terminates the agreement on the grounds of fraud committed by Publisher, Service Provider will not be required to make this payment to Publisher.

## **Article 8. Disputes and applicable law**

8.1. The agreement and these Affiliate Terms and Conditions is governed exclusively by Dutch law.

8.2. Any disputes between the parties that cannot be settled amicably will be submitted to the competent Dutch court for the district where the Service Provider has its registered office.

## **Article 9. Amendments and additions**

9.1. Any general terms and conditions of Publisher will not form part of the agreement.

9.2. If any provision of the agreement or these Affiliate Terms and Conditions are found to be contrary to applicable law, this provision will be amended such that it is in accordance with applicable law, with due observance of the intended meaning of the relevant provision.

9.3. Service Provider will be authorised to amend the agreement or these Affiliate Terms and Conditions with new Terms and Conditions. These amendments or additions will become effective thirty days following notification to Publisher.

9.4. If Publisher chooses not to accept an amended or completed term/condition, it shall terminate the agreement within these thirty days. If Publisher fails to do so, it shall be deemed to have given its approval of the amended or additional term(s)/condition(s).

## **Article 10. Other provisions**

10.1. Without prior consent, the parties will not provide any information and/or make any statements to third parties regarding the contents of the agreement or these Affiliate Terms and Conditions, the partnership between the parties or the results of the Affiliate Service.

10.2. Publisher will not be authorised to transfer this agreement and all its rights and obligations arising therefrom to a third party without the express consent of Service Provider. Service Provider will be authorised to transfer this agreement and all its rights and obligations arising therefrom to a third party that acquires the business operations to which this agreement is subject.

10.3. The version of any communications between the parties received by or stored by Service Provider will be deemed to be the authentic version, unless Publisher can demonstrate that this version is not authentic.

10.4. If any data relevant to Service Provider regarding Publisher changes, Publisher will notify Service Provider immediately using the control panel.