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MSP Concept GmbH & Co. KG

Düsseldorfer Str. 70 A · 10719 Berlin · Germany

Status of the document: 13. December 2022

Internet Partner Contract

The following Internet Partner Contract is entered into between MSP Concept GmbH & Co. KG, Düsseldorfer Str. 70 A, 10719 Berlin, hereinafter referred to as the Provider, and the contracting partner, hereinafter referred to as the Partner:

1. Object of the contract

The object of this contract is the participation of the Partner in the Provider's Internet Partner Programme. The Internet Partner Programme allows the Partner to publish electronic advertisements (advertising formats), e.g. using banners and links on an internet advertising medium, on its own responsibility. The Partner shall receive success-based remuneration for publishing advertising formats. The Partner is a legally and commercially independent entity. The Partner is responsible for complying with all legal regulations regarding the operation of advertising media.

2. Advertising formats and advertising media

1. The Provider provides the Partner with advertising formats (banners, links, etc.) - in the partner area of the Provider's internet site. The Partner is not entitled to use any other advertising formats of the Provider, which the Provider uses outside the partner area. In addition, the Partner is not entitled to use its own advertising formats or to change the Provider's advertising formats, except with the express prior consent of the Provider. Such a prohibited change also includes changing the source text or the hyperlink to the advertising formats. The Partner is solely responsible for the use of its own or changed advertising formats, irrespective of any consent of the Provider.
2. The advertising formats contain a reference between the internet advertising medium of the Partner and the internet pages of the Provider using a hyperlink which directs visitors of the Partner's advertising medium to the internet page of the Provider. The integration of advertising formats into the advertising media is the Partner's responsibility.
3. After the end of participation in the Internet Partner Programme, the Partner and its representatives are prohibited from using further the advertising formats. Any advertisements published on advertising media are to be deleted immediately.

3. Conclusion of the Internet Partner Contract

1. The Partner applies for participation in the Internet Partner Programme of the Provider by transmitting the online application form completed fully and truly to the Provider.
2. The Internet Partner Contract enters into force as soon as the Provider has accepted the application of the Partner and notified the Partner thereof by e-mail (registration).
3. The Provider reserves the right to refuse the registration.
4. The applicant assures that he/she is at least 18 years old and fully competent.

4. Duties and liability of the Partner, prohibition of manipulation

1. The Partner is obliged to provide true and complete information to the Provider. If the facts underlying the information provided change during the term of the Internet Partner Contract, the Partner has to correct it immediately in the partner area of the Provider's internet page. This includes, in particular, information about the advertising medium used, the corporate status and the tax status of the Partner.
2. The Partner is obliged to take note of any messages stored for it in the partner area of the Provider's internet page or sent by E-Mail and to take them into account regarding its further participation in the Internet Partner Programme. For this purpose, the Partner has to log in regularly to the partner area or open the messages sent to the e-mail address indicated.
3. Operation and maintenance of the advertising media as well as their contents and topicality are the exclusive responsibility of the Partner. The Partner guarantees not to use any other advertising media which violate good customs and applicable laws. The Partner also guarantees that the advertising media used do not infringe any rights of third parties; the latter applies, in particular, for patent rights, copyrights, trademark rights and other intellectual property rights.
4. The Partner is responsible for the proper integration of advertising formats. The Partner may not change the source text provided by the Provider. The Partner may only use advertising formats provided by the Provider or approved by the Provider in line with clause 2.a.
5. The Partner undertakes to release the Provider from any claims of third parties, which are made against the Provider for reasons under the Partner's control, as well as to pay all costs of the Provider for defending against such claims. The Partner is obliged to support the Provider in defending against such claims by making necessary declarations and providing necessary information.
6. The Partner is not entitled to operate an internet page, which can be confused with the internet pages of the Provider. This also includes the use of domains that sound or appear similar to the brand names and/or business name of the Provider.
7. The Partner is responsible for the topicality of the advertising formats and advertising media used and undertakes to remove advertising formats from an advertising medium when requested to do so by the Provider.
8. The partner may not advertise the provider's advertising formats in advertising media if this impairs the provider's own advertising activities in the same advertising media (e.g. using direct links to www.penimster.com in "Google Adwords"-campaigns).
9. If the Partner uses the internet search engines for promoting the advertising media, the Partner has to fulfil the following obligations:
 1. The Partner is prohibited from designing pages on which it publishes the advertising formats of the Provider in such a way that they achieve the highest placement possible through manipulation of the indexing of search engines in an anti-competitive way.
 2. When selecting search terms and domain names relevant to the topic, the Partner is obliged to ensure that the provisions of competition laws are observed and trademark rights of third parties are not violated
10. The Partner is prohibited from publishing advertising formats of the Provider on advertising media that contain diallers and/or spyware.
11. If the Partner uses e-mail messages as an advertising medium, applicable statutory provisions are to be complied by it, in particular those of the Law Against Unfair Competition.
12. Direct advertising is expressly prohibited. Direct advertising includes all forms of individual, non-personal communication between the supplier and selected customers, primarily sales letters, brochures, catalogues, product samples. This includes, for example, direct mailing as targeted written advertising delivered by e-mail or post.
13. The Partner is prohibited from triggering automated calls of the Provider's internet pages. The Partner is aware of the fact that the Provider uses manipulation protection against system abuse, such as time blocks (clicks per time unit), IP blockages or cookies, whose parameters are not disclosed. The Provider has not to prove which concrete clicks are affected by the protection system.
14. The Partner's test orders are to be clearly marked as such to test functionality of the system.
15. Any violations of the aforementioned duties result in immediate exclusion from the Internet Partner Programme of the Provider. The Partner has to reimburse the Provider for all costs caused by a violation of contract by the Partner.

5. Services of the Provider

1. Upon the conclusion of the contract, the Provider creates an individually protected partner area at the internet address **partner.penimaster.com**. The associated access data is defined during the registration process. In the partner area, the Partner will find tips and notes about the participation in the Partner Programme All partner data is managed there in a safe and secure way.
2. The partner area serves to provide the source texts of the advertising formats, which the Partner integrates into its advertising media.
3. The Provider logs the performance achieved via the advertising media, makes the statistics about the Partner's performance available in the partner area and is responsible for paying advertising cost reimbursements. The form, scope and frequency of statistics can be modified by the Provider at any time.
4. The Provider is responsible for the complete handling of the negotiated order and reserves the right to refuse any orders negotiated by the Partner without indicating any reasons, e.g. orders from customers with a negative credit worthiness or address check. The Partner has no claim for remuneration in this case.
5. A purchase contract is concluded exclusively between the customer negotiated by the Partner and the Provider.

6. Remuneration of the Partner and billing

1. The Partner receives commission from the Provider for all purchase contracts for complete products of the brand [PeniMaster](#) negotiated in the context of the Partner Programme, when the customer has received the goods and paid the purchase price, and if the contract has not been dissolved due to the right of revocation, purchase on trial or for any other reasons. The Partner will not receive commission for the sale of spare parts, consumption parts, wear and tear parts, accessory parts and third party products.
2. Commission is a sales-based percentage, if agreed staggered according to the amount of turnover, of the net purchase price (excluding value added tax and incidental costs) for the purchase contracts negotiated by the Partner. The amount of the percentage is agreed upon registration or in the partner area. The value added tax is calculated on the net commission in line with applicable provisions. The Provider may change the calculation subsequently, if the value added tax conditions are changed. The Partner has no claim against the Provider for having the tax calculations explained.
3. Commission is paid only for payments received by the Provider for a purchase contract negotiated. Payments of the customer are first set off against costs and expenses for order handling (e.g. postage, bank charges, collection charges, etc.) and, when those are settled completely, on the purchase price.
4. The commission calculation takes into account all orders that are placed via a link provided to the Partner by the Provider on the Provider's Internet pages.
5. The remuneration is credited to the partner and settled on the last day of a month. The billing statement is stored in the partner area. The billing statement includes only sales that have been realised (receipt by the Provider) not earlier than 4 weeks. The billing statement is created not later than 12 weeks following the realisation of sales. If sales already billed are cancelled subsequently, the billing statement will be corrected accordingly. Any errors and complaints in the statement are to be claimed by the Partner within a month. After the end of the month, the billing statement is regarded as approved.
6. Payment is made when the minimum payment individually defined in the partner area amount has been achieved. The minimum payment amounts can be changed subsequently following previous notice from the Provider.
7. Payment is made using the method selected in the partner area (bank transfer, credit card credit note, etc.) using the data filed. The costs of money transfer shall be borne by the Partner. If the minimum payment amount is not achieved at the end of a month, the credit is carried forward to the following month. Remuneration below the minimum payment amount is paid out when the minimum is achieved in any subsequent month. No interest is paid on remuneration not paid out. Remuneration not paid out is paid out after the end of the Partner Contract.
8. For all orders received by the Provider and negotiated by the Partner, the Partner receives a message, which includes all order data, except for personal data of the customer. The Partner has no right to any other evidence on the purchase contract negotiated or to an explanation of the billing statement.
9. If the Partner has a VAT ID, the Partner undertakes to notify the Provider thereof upon registration or later in the partner area. The Partner is solely responsible for proper taxation of remuneration.
10. If the account balance shows a debit (minus amount) at the settlement date, no credit note and settlement are created. Debit amounts are offset against positive credit balances from sales. A credit note will only be issued if the balance is at least one euro cent. MSP Concept can claim minus amounts from the partner at any time.

7. Language of correspondence

The languages of correspondence regarding the performance of the present Internet Partner Contract are exclusively German and English. Any inquiries, notices and information in any other language are regarded as not made.

8. Granting of rights of use

The Partner is granted a non-exclusive, non-transferable, at any time revocable right limited to the term of this collaboration to use company names, trademarks and logos of the Partner in the design approved by the Partner exclusively in the context of this Internet Partner Contract.

9. Independent contracting parties

The Provider and the Partner are legally independent parties and operate their internet pages independently from each other. This contract does not create a joint venture or association or employment relationship or a dealership agreement. However, if a dealership agreement is used as the basis, the Partner is active as a commercial agent in sideline activity pursuant to section 92 b German Commercial Code (HGB). Neither the Partner nor the Provider is entitled to appear in the name of the other party and/or to make any declarations in its name.

10. Term and termination

1. This contract is entered into for an unlimited period and can be terminated by either party in the partner area at any time. Four weeks following termination, access to the partner area is blocked.
2. After the end of the contract, the partner is obliged to remove immediately all advertising formats and links to the Provider from its internet page.
3. The Partner is entitled to receive remuneration for all orders negotiated during the term in compliance with clause 6.
4. The Provider is entitled to have any excess payments made to the Partner reimbursed. Excess payments are to be repaid by the Partner to the Provider no later than 14 calendar days after the creation of the billing statement and request for reimbursement. If additional reminders are necessary thereafter, the Partner has to reimburse the reminder costs of €7.50 for each further request for payment

11. Changes in the Internet Partner Contract

1. The Provider has the right to modify the contractual conditions at any time. The Partner will be informed about it in the partner area and by e-mail.
2. The Partner can appeal against the change within a period of 30 days. If the Provider does not receive an appeal within this period, the changes are regarded as accepted by the Partner and form a part of the contract.
3. The right of the Partner to terminate the present contract with notice shall not be affected.

12. Liability of the Provider

1. Subject to the regulation in paragraph b., the statutory liability of the Provider for damages is limited as follows:
 1. In the event of a slightly negligent breach of material duties under the contractual relationship, the Provider shall be liable for an amount limited to the typical damage foreseeable upon the conclusion of the contract.
 2. The Provider shall not be liable for a slightly negligent breach of immaterial duties under the contractual relationship.
2. The above-mentioned limitation of liability shall not apply to mandatory statutory liability (in particular under the Product Liability Act) and to the assumption of a warranty or any culpably caused physical injuries.

13. Final provisions

1. The Internet Partner Contract contains all arrangements of the contracting parties regarding the object of the contract. Upon its commencement, the Internet Partner Contract shall replace and supersede any prior arrangements of the contracting parties regarding the object of the contract.
2. Any changes and additions to the Internet Partner Contract must be made in writing and are to be made within the partner area. This shall also apply to any changes in this written form clause.
3. Should one or several provisions of the Internet Partner Contract are or become invalid, the validity of the remaining provisions and of the contract as a whole shall not be affected. The same shall apply, if the Internet Partner Contract contains a loophole. The invalid provision or loophole in the Internet Partner Contract shall be replaced automatically by a valid provision that comes closest to the economic purpose of the Internet Partner Contract.
4. The laws of the Federal Republic of Germany shall be applicable to the Internet Partner Contract. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Internet Partner Contract shall be the registered office of the Provider. This agreement on the venue only applies to merchants; the statutory venue shall apply to all other customers.

With best regards

Matthias Suchy
Dipl-Kommunikationswirt
Managing Director

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