

General terms and conditions d2m - direct marketing merz (as per: 08/2004)

1. General:

These terms and conditions are integral part of all our offers and contract on address deliveries, booking of inserts and advertisements as well as all other services – including consulting and mediation of marketing service (e.g. Call Centre, lettershop, fulfilment, services of agencies) – with and for our clients. Our deliveries, services and offers are submitted solely based on these terms and conditions. Differing conditions of the client, which we have not accepted expressly, are non-binding for us, also in case we did not disagree expressly. All our offers are open offers.

2. Conclusion of contract:

The contract with the client is only concluded with our written order confirmation or execution of the order.

3. Address broking:

3.1 When acting as a list broker, d2m is only mediator between the client (user of data) and the supplier (owner or manager of data). Client and supplier acknowledge that the address rental contract is closed solely between user and owner/manager directly. No claim can be made on d2m from the contract closed between user and owner/manager.

3.2 Without written approval from the owner, the advertisement of the user may not give any direct or indirect information on the source of address material.

3.3 In case the user of addresses mandates a third party service company with the processing of the addresses, the user has to commit this processor to handle data in compliance with the valid data protection legislation (in Germany "Bundesdatenschutzgesetz"). The user of data is fully liable for each case of misuse.

3.4 The duties between d2m and the data owner are regulated in a separate list management contract.

4. Usage of addresses; prohibition of multiple use

4.1 The addresses mediated and delivered by d2m will only be used as agreed with us. The client has to take care that with the usage of addresses all legal requirements – especially the data protection regulations – are respected.

4.2 In case we did not agree on a delivery of addresses for multiple use all addresses are supplied by d2m solely for one-time and own use by the client. A single control address is considered sufficient as proof for an abusive multiple use.

4.3 Addresses of persons who ordered or requested an offer based on the mailing of the user will pass into the property of the user and can be used by him for own activities afterwards without limitation (but no usage by third parties). This does not apply for the sole participation in raffles or prize contests.

4.4 For each usage of addresses that offends against this prohibition of multiple use, the user has to pay a contractual penalty amounting to 10-times the value of the address order from which he obtained the addresses used illegitimately.

5. Delivery:

5.1 Delivery dates in the order confirmation indicate the moment at which the product ordered is handed over to a transport company. Fixed dates will only be accepted by us, in case we expressly confirmed them in writing.

5.2 Force majeure, collective action as well as unexpected delays at our suppliers admit us as mediator of addresses or other services to deliver with an appropriate delay or to withdraw from the contract partially or totally. This will not entitle the client to sue d2m for damages. The delivery time will extend accordingly in case the client makes modifications to the order after the placement of order.

6. Returns:

As mediator of addresses (broker) d2m bears no expenses caused by returns. The return policy of the address owner will apply – as far as existent. The address owner assumes no liability that the addressee is what he is described as or describes himself as being.

7. Payment terms:

7.1 The prices result from the current price list or our order confirmation. All prices are net prices without costs for packaging, postage, transport and transport insurance (only on individual demand), bank charges, customs duties and VAT. Our invoices are payable without deduction immediately after reception. In case of delayed payment we will charge interest for delay at market prices without a prior reminder will be necessary.

7.2 In case of address mediation d2m is entitled for encashment at the user on behalf and by order of the address owner. Our payment will be effected expressly subject to the payment of the address invoice by the user.

7.3 The delivered quantity will be charged. Because of regular updates this quantity might differ compared to the offer or order confirmation. Did we offer to a minimum order or minimum quantity, these represent the lower price limit.

7.4. d2m reserves the right to deliver for new customers and international customers only against partial or complete prepayment.

8. Warranty:

As mediator, d2m does not assume any liability for services carried out by companies we mediated. For address orders this is the case relating to correctness and completeness of address material, for the indicated quantity and classification as well as the recency of data. The client has to assert eventual claims for recourse directly against the company that carried out the service or in case of address orders directly at the address owner. Client and supplier or address owner acknowledge expressly this regulation and commit themselves to settle in direct relationship.

9. Applicable law:

For all legal relationship with d2m solely the German law will be applicable. The European convention on contracts „EKG“ is not applicable.

10. Execution, Jurisdiction:

Place of execution of all services is Rottweil. This contract shall be governed by German language and the parties agree to submit to the exclusive jurisdiction of the courts of Rottweil / Germany.