

Terms and Conditions for the “nu3 partner program”

1. Validity

1.1 These terms and conditions (the “Terms”) govern the contractual relationship between nu3 GmbH (“NU3”) and a member (the “Member”) of the advertising program which is distributed via the platform of Zanox (the “nu3 partner program”).

1.2 “Zanox” means, a company registered in Germany under HRB 75459 whose registered office is at Stralauer Allee 2, 10245 Berlin.

1.3 The Member’s relationship with Zanox shall be governed by such terms and conditions as may be agreed from time to time between Zanox and the Member and is independent from the relationship between the Member and nu3.

2. Subject matter of these Terms

2.1 These Terms govern the relationship between the Member and nu3 and regulate the participation by the Member in the nu3 partner program and the use of advertising material, including banners, buttons and text links, produced by nu3 relating to the www.nu3.se website (“Advertising Media”) by the Member on the Member Website (as defined below). Zanox distributes the Advertising Media to members in the nu3 partner program.

2.2 If the Member wishes to participate in the nu3 partner program, the Member shall make an application to participate directly to Zanox. In submitting that application to Zanox, the Member shall be considered to have indicated its agreement to these Terms between the Member and nu3.

2.3 The Member shall place the Advertising Media only on a website owned by him/her and registered with Zanox for the nu3 partner program (the “Member Website”). There is no restriction on how long the Member can display Advertising Material on the Member Website, and the Member may remove the Advertising Material from the Member Website at any time.

2.4 The registration for the nu3 partner program and ongoing participation in it shall be the subject to the terms and conditions governing the relationship between the Member and Zanox.

2.5 The Member’s involvement in the nu3 partner program and its use of any Advertising Media shall be tracked and recorded by Zanox, and reports of such information shall be available to nu3.

2.6 nu3 reserves the right to update these Terms at any time. Any amendments shall be communicated to the Member by the nu3 partner program. The Member has to accept any amendments in the way specified by Zanox within 4 weeks of receipt of that communication. In the event that the Member does not accept the updated version of these Terms within 4 weeks of receipt of the updated version of the Terms from Zanox, the Member’s participation in the nu3 partner programs shall terminate with immediate effect.

3. nu3's obligations

3.1 nu3 shall perform its obligations under these Terms with reasonable skill and care.

3.2 nu3 shall supply Advertising Media that complies with German law.

3.3 nu3 shall be responsible for the quality and correctness of the Advertising Media.

3.4 nu3 shall operate the www.nu3.se website and any content or functionality on that website within the technical abilities available to nu3. nu3 does not warrant that the availability of that website shall be error-free and uninterrupted.

4. The Member's Obligations

4.1 The Member warrants that, on the Member Website, Advertising Media shall not be surrounded, framed, adjacent to or in any way associated with, content which promotes, advocates, facilitates or otherwise displays content which is, contains or is related to:

4.1.1 Material of any kind or nature which is illegal or unlawful;

4.1.2 Material which is harmful to children, pornographic, obscene or sexually explicit;

4.1.3 Material that defames, abuses, is libellous, is tortious or threatens physical harm to others;

4.1.4 Any software, product or service that is illegal or that violates the rights of a third party including, but not limited to, spyware, malware, adware, services that send unsolicited advertisements, campaigns designed to initiate "denial of service" attacks, campaigns designed to gain unauthorized access to networks on the Internet; or any spoofing, redirecting or trafficking from other websites in an effort to gain traffic;

4.1.5 Any software, product or service that harvests or collects the personal information of users, whether or not for commercial purposes, without the express consent of such users;

4.1.6 Any material that otherwise infringes upon the rights of any third parties through false advertising, unfair competition, invasion of rights of publicity or privacy, violation of any anti-discriminatory law or regulation, or any other right of any person or entity.

4.2 The Member shall not own or operate any website that could lead to confusion with any website owned or operated by nu3. The Member shall not copy any aspect of such websites owned or operated by nu3, including graphics, texts or other content.

4.3 The Member shall not indicate, whether on the Member Website or otherwise, that the Member Website is in any way owned, operated or contributed to by nu3.

4.4 The Member shall not use any of nu3's logos or trademarks without the prior written consent of nu3, which may be refused at nu3's sole discretion.

4.5 The Member shall not use the word 'nu3' in any search engine or other keyword-based marketing to advertise its own or another's brands.

4.6 The Member warrants that it will use cookies in relation to the Advertising Media only in the event that Advertising Media is visible on the Member Website and a user clicks on such Advertising Media. The Member shall not use layers, add-ons, iFrames or post view technology.

4.7 The Member may only apply for and/or display and/or otherwise utilise or make available vouchers that nu3 has explicitly released for that purpose to affiliates with whom nu3 has a contractual relationship and/or has communicated via newsletter to nu3-selected persons for that purpose. The application for and/or display and/or utilisation or making available of other vouchers e.g. from newsletter-end-customers, print ads or customer service contacts, is prohibited and such vouchers shall be null and void.

4.8 If nu3 releases a request, the member shall remove all Advertising Media from the Member Website immediately for any reason.

4.9 The Member shall indemnify nu3 on a continuing basis against all damages, costs, charges, losses, liabilities and expenses incurred by nu3 arising from or incurred by reason of any breach or alleged breach of the Member's obligations under these Terms and the Member agrees to be responsible for any reasonable costs (including lawyers' fees) and expenses involved and pay any damages finally awarded against nu3 in any such claim.

5. Commission

In consideration of nu3 maintaining its agreement with ZanoX (which nu3 understands will activate a right for the Member to be paid commission by ZanoX for its participation in the nu3 partner program under the Member's agreement with ZanoX), the Member undertakes to be bound by these Terms and all obligations contained in these Terms.

6. Liability

6.1 This clause 6 prevails over all other clauses and sets forth the entire Liability of nu3, and the sole and exclusive remedies of the Member, in respect of:

6.1.1 Performance, non-performance, purported performance, delay in performance or misperformance of these Terms or of any goods, services or software in connection with these Terms;
or

6.1.2 otherwise in relation to these Terms or entering into these Terms.

6.2 Nothing in these Terms shall exclude or limit nu3's Liability for: (i) fraud; (ii) death or personal injury caused by its Breach of Duty; (iii) any breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982; or (iv) any other Liability which cannot be excluded or limited by applicable law.

6.3 Except as provided in clause 6.1, nu3 does not accept and excludes any Liability for Breach of Duty other than any such Liability arising pursuant to these Terms.

6.4 Except as provided in clause 6.1, nu3 shall have no Liability for:

6.4.1 Loss of anticipated profits;

6.4.2 Loss of contracts;

6.4.3 Loss of the use of money;

6.4.4 Loss of anticipated savings;

6.4.5 Loss of business;

6.4.6 Loss of opportunity;

6.4.7 Loss of goodwill;

6.4.8 Loss of reputation;

6.4.9 Loss of, damage to or corruption of data; or

6.4.10 Any indirect or consequential loss; and such Liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, clauses 6.4.1 to 6.4.9 apply whether such losses are direct, indirect, consequential or otherwise.

6.5 Except as provided in clause 6.1, nu3's total Liability under these Terms shall in no circumstances exceed, in aggregate, a sum equal to the greatest of: a) 110% of the aggregate commission payable by nu3 to the Member in the 12 months preceding any cause of action arising; or b) SEK 8,000.

6.6 The limitation of Liability under clause 6.5 has effect in relation both to any Liability expressly provided for under these Terms and to any Liability arising by reason of the invalidity or unenforceability of any provision of these Terms.

6.7 In this clause 6:

6.7.1 "Breach of Duty" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

6.7.2 "Liability" means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with these Terms, including liability expressly provided for under these Terms or arising by reason of the invalidity or unenforceability of any provision of these Terms.

7. Contract Length and Termination

7.1 Either party may terminate these Terms at any time immediately by written notice to the other.

7.2 Following termination of these Terms, the Member shall delete and dispose of any Advertising Media and any data or information relating to the Advertising Media which the Member has received and used immediately. The Member shall provide nu3 with written acknowledgement of compliance with this clause 7.2 on request.

8. Confidentiality

8.1 Any confidential information and proprietary data provided by either of us to the other (including any Advertising Material), shall be deemed "Confidential Information" of the party disclosing it. Confidential Information shall be kept in the strictest confidence and shall be protected by all reasonable and necessary security measures. Confidential Information shall not be released by the receiving party to anyone except an employee, or agent who has a need to know same, and who is bound by confidentiality obligations. Neither of the parties will use any portion of Confidential Information provided by the other for any purpose other than as necessary for the performance of these Terms.

8.2 The provisions of this clause 8 shall remain in effect following termination of these Terms under clause 7.1 above or otherwise.

9. Assignment

9.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of these Terms, nu3 may assign, transfer, novate or subcontract its rights, liabilities or obligations under these Terms either in whole or in part to any other person, firm or company. nu3 shall promptly give notice to the Member of any such assignment.

9.2 The Member shall not (or purport to) assign, sub-license, transfer, novate, charge or otherwise encumber, create any trust over or deal in any manner with these Terms or any of its rights, liabilities or obligations under these Terms without the prior written consent of nu3.

10. Entire Agreement

10.1 The provisions of these Terms shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the parties here to preceding the matter of these Terms and to the exclusion of any representations not expressly stated herein except for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each party acknowledges that it has not entered into these Terms based on any representation that is not expressly incorporated into these Terms.

10.2 These Terms apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Member.

10.3 These Terms constitute the whole agreement and understanding of the parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.

11. General Provisions

11.1 Neither party shall be liable for any delay or failure to perform its obligations under these Terms to the extent that and for so long as such delay or failure results from circumstances beyond its control (an "event of force majeure"). If an event of force majeure occurs, the party suffering the event of force majeure shall notify the other as soon as reasonably practicable of becoming aware of it. If any event of force majeure continues for more than 3 weeks, the party not suffering the event of force majeure shall have a right to terminate these Terms immediately on written notice to the other.

11.2 All notices required or permitted to be served or given shall be in writing and sent by recorded delivery or courier or fax or email to the intended recipient's address as either party may notify to the other from time to time. Notices shall be treated as having been served 2 working days after despatch if sent by recorded delivery or courier, and on confirmation of transmission if sent by fax or email.

11.3 A failure by nu3 to enforce or exercise at any time or for any period of time any term of or any right pursuant to these Terms does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect nu3's right later to enforce or exercise it.

11.4 If any provision of these Terms is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining provisions, be deemed omitted from these Terms and shall in no way affect the legality, validity or enforceability of the remaining provisions.

11.5 The provisions of clauses 1, 6, 8, 9, 10, 11 and 12, together with those provisions that either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, shall survive termination of these Terms.

11.6 Each party shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by these Terms.

11.7 No variation to the scope or provisions of these Terms shall take effect unless agreed in writing by both parties.

11.8 Nothing in these Terms shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the parties.

11.9 These Terms (and all non-contractual relationships arising out of or connected to them) shall be governed by and construed in accordance with German law. Each party irrevocably agrees that the German courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Terms (including non-contractual disputes or claims).

12. Interpretation

12.1 In these Terms: the singular includes the plural and vice versa; words of any gender includes all genders; and "person" shall include partnerships, bodies corporate and unincorporated associations of persons and vice versa (including persons, individuals, companies, firms, governments, states, regional or local authorities, agencies of a state, joint ventures, trusts, charities, societies, funds, associations (whether or not having separate legal personality and whether incorporated or not)).

12.2 In these Terms: clause headings are for ease of reference and do not form part of, nor shall they affect, the interpretation of these Terms.

12.3 In these Terms: references to "include" and "including" shall be deemed to mean respectively "include(s) without limitation" and "including without limitation".

12.4 In these Terms: references to each party include references to its successors in title, permitted assigns and novatees.

12.5 In these Terms, except as expressly stated otherwise, all warranties, conditions and other terms, whether express or implied, by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.

12.6 No person who is not a party to these Terms shall acquire any rights under it or be entitled to benefit from any of its provisions even if that person has relied on any such provision or has indicated to any party to these Terms its assent to any such provision.

nu3 GmbH

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