

MIRAKL ADS WEBSITE – General Terms of Use

version 01/01/2023

Mirakl Ads Website is a platform operated by Mirakl that brings together a community of Publishers and Advertisers, in order to allow Advertisers to display advertisements on the Publishers' Platforms.

Any use of the Mirakl Ads Website shall be governed by those General Terms of Use.

Access, consultation, browsing and/or use of the Mirakl Ads Website implies full acceptance of this document, which defines the terms of use of the Mirakl Ads Website by any User.

Therefore, before any use of the Mirakl Ads Website, User is invited to read these General Terms of Use and Mirakl recommends User to print and archive a copy of it. If User refuses all or part of any of the provisions of these General Terms of Use, User must not use the Mirakl Ads Website, and therefore the Advertising Services.

The current version of these General Terms of Use is accessible at any time on the Mirakl Ads Website.

From time to time and subject to a reasonable written notice to User, Mirakl may modify these General Terms of Use. By continuing to use the Mirakl Ads Website after the entry into force of the updated version of these General Terms of Use, that implies the acceptance by User of those terms.

ARTICLE 1. DEFINITION

Account: means the User account created on the Mirakl Ads Website allowing User to access the Mirakl Ads Website and manage User's use of the Advertising Services.

Advertiser: means the marketplace sellers or suppliers (or their media agencies) of the Publisher's Platform.

Affiliate: means any corporation or entity that directly or indirectly controls, is under common control with, or is controlled by Mirakl.

For the purpose of this definition, "control" means the ownership of more than fifty percent (50%) of the voting equity in such entity or otherwise the ability to direct the management of such entity.

Confidential Information: means any information disclosed by a Party or communicated to, entrusted to, or obtained in any form whatsoever, verbally or in writing, by the other Party, including but not limited to: (i) any technical, operational, or commercial information, as well as documentation, relating to the Mirakl Ads Website, Mirakl Ads Platform and/or to Mirakl, (ii) any information identified as "confidential"; and (iii) any information that is confidential in nature or the receiving Party knows, or ought reasonably to know, is confidential.

Data Protection Laws: means any applicable regulation relating to data protection and in particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR").

Mirakl: means MIRAKL, a *société par actions simplifiée* incorporated in France (RCS Paris n° 530 897 990), with offices located at 10-12, rue de Lübeck, 75116 Paris, France.

Mirakl Ads Platform: means the solution that Publishers subscribe to from Mirakl or one of its Affiliates that allows them to monetize advertising spaces on their Publisher's Platform to Advertisers.

Party/Parties: means Mirakl and User(s), either individually or collectively.

Personal Data: has the meaning ascribed to it under the Data Protection Laws.

Mirakl Ads Website: means the website operated by Mirakl, accessible via the URL address retailmedia.mirakl.net, through which Publishers can manage their use of Mirakl Ads Platform and Advertisers can subscribe to and manage their use of the Advertising Services.

Publisher: means the operator of the Publisher's Platform or another party authorized to resell Advertising Services on the Publisher's Platform.

Publisher's Platform: means the Publisher's e-commerce website and/or marketplace.

Advertising Services: means the advertising services purchasable from the Mirakl Ads Website under an agreement separate from these General Terms of Use directly entered into between an Advertiser and a Publisher.

User: means the person representing the Advertisers or Publishers on the Mirakl Ads Website and authorized by them to access and use the Mirakl Ads Website on their behalf.

User Data: means all data entered into the Mirakl Ads Website by User.

ARTICLE 2. PURPOSE

The Mirakl Ads Website is a web interface allowing Advertisers and Publishers to manage their activity related to the Advertising Services, notably by creating advertising campaigns for advertising formats sold by the Publisher.

The use of the Mirakl Ads Website is a prerequisite for the subscription to the Advertising Services which are subscribed to independently and through a separate agreement from Mirakl or Publishers.

ARTICLE 3. PLATFORM AND ADVERTISING SERVICES ACCESS

3.1. Account Creation. Any marketplace seller of a Publisher's Platform can access the Mirakl Ads Website with a dedicated redirection link. After the profile of the Advertiser it represents is created by User or another User representing the same Advertiser, its Account is automatically created with the information of its seller account on the Publisher's Platform at its first connection on the Mirakl Ads Website.

Publisher may request Mirakl to create Accounts for its own Users or its suppliers' Users.

At the time of the creation of its Account, User receives an email containing the contractual documents governing the use of the Mirakl Ads Website, notably these General Terms of Use.

Each User may create Accounts for new Users on behalf of the Advertiser or Publisher it represents and delete its accounts as well as the Account of other Users of the Advertiser or Publisher it represents. User is therefore fully accountable for the use of the Mirakl Ads Website and Advertising Services made by any Account it has created, and shall be responsible for any action or omission carried out through the use of said Account.

3.2. Access to the Mirakl Ads Website. Access to the Mirakl Ads Website is protected (encrypted) through SSL protocol to ensure data privacy and integrity. User's identification requires the use of an ID with an associated password (or a User API key). User shall maintain its credentials strictly confidential and shall not disclose it to any third party. User shall take sole responsibility for any actions and activities made with a User's ID and password (or with a User API key), and potential damages resulting therefrom, whether or not User authorized such actions and activities.

In case User suspects unauthorized use and/or activity of its ID, associated password and/or User API key, it shall immediately notify Mirakl which can decide, at its sole discretion, to take appropriate measures (suspension of the access to the Mirakl Ads Website, modification of the password, User's ID, or User API key, etc.).

MIRAKL ADS WEBSITE – General Terms of Use

version 01/01/2023

ARTICLE 4. MIRAKL ADS WEBSITE USAGE POLICY

User undertakes to use the Mirakl Ads Website offered therein in a manner consistent with these General Terms of Use.

In particular User warrants and represents that it will:

- not behave likely to undermine the integrity, functioning or security of the information system on which the Mirakl Ads Website and the Advertising Services offered on it are based;
- not intrude or attempt to intrude into Mirakl's information systems;
- not attack or attempt to attack on the authentication and other security measures of the Mirakl Ads Website;
- not collect, extract or use, in any way whatsoever, information on the Mirakl Ads Website;
- not act in a manner likely to infringe the rights and interests of Mirakl;
- ensure that User Data does not and shall not infringe any third-party right, including any intellectual property right, such as those related to pictures, trademarks, logos, hyperlink, description, etc.;
- comply with the terms of the agreement it enters into with other Users in relation to the Advertising Services; and
- comply with any and all laws and regulations applicable to its use of the Mirakl Ads Website, and to User Data. In particular, this includes (i) Data Protection Laws and (ii) all applicable laws, rules and regulations, including obtaining any licenses or authorizations required in order for User to operate and to offer services to other Users, including, without limitation, any publicity authorization.

User shall indemnify, defend, and hold Mirakl harmless from and against any and all damages, liabilities, suits, claims, expenses (including reasonable attorneys' fees) resulting from any claim or actions of any kind brought against Mirakl, its Affiliates, employees or subcontractors by any third party and related to any infringements or violations of such third party's rights, including any intellectual property right, as well as any claim or action related to (i) User's use of the Mirakl Ads Website, to (ii) User Data and/or to (iii) a claim made against Mirakl by another User in relation with the Advertising Services.

ARTICLE 5. USER DATA

By using the Mirakl Ads Website, User expressly agrees that its User Data may be shared with the relevant Publishers to use the Advertising Services and to display the advertising campaign on the Publishers' Platforms.

In addition and in order to provide User with the latest upgrades to the Mirakl Ads Website, User acknowledge and agrees that Mirakl may use User Data notably to (a) improve its existing products and services (including product features and functionalities, workflows, and user interfaces) and develop new products and services, (b) maximize resource and support allocation, (c) develop learning algorithms, and (d) identify industry trends and developments, indexing and anonymous benchmarking.

ARTICLE 6. LIABILITY

6.1. Disclaimer. EXCEPT AS EXPRESSLY INDICATED IN THESE GENERAL TERMS OF USE AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MIRAKL PROVIDES THE MIRAKL ADS WEBSITE ON AN "AS-IS" AND "AS AVAILABLE" BASIS. MIRAKL MAKES NO WARRANTIES HEREIN, AND MIRAKL, ITS AFFILIATES, AND ITS AND THEIR EMPLOYEES, DIRECTORS AND AGENTS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, MIRAKL FURTHER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, THAT THE MIRAKL ADS WEBSITE WILL SATISFY ANY OR ALL OF USER'S REQUIREMENTS AND OR WILL BE UNINTERRUPTED, ERROR-FREE OR FREE FROM HARMFUL COMPONENTS. UNLESS OTHERWISE EXPRESSLY AGREED BETWEEN MIRAKL AND USER, IN NO EVENT SHALL MIRAKL BE PART OF THE COMMERCIAL AND CONTRACTUAL RELATIONSHIPS BETWEEN USERS FOR THE SUBSCRIPTION OF THE ADVERTISING SERVICES, SUCH RELATIONSHIPS BEING EXCLUSIVELY GOVERNED BY ANY CONTRACTUAL DOCUMENTS THAT THE CONCERNED USERS CONSIDER TO BE NECESSARY TO GOVERN THEIR RELATIONSHIP.

6.2. Liability. In the event that Mirakl is held liable for damages not provided for in this article, its liability will be limited to certain and direct damages exclusively in relation to a breach by Mirakl of these General Terms of Use.

Consequently, to the maximum extent permitted by applicable law, in no event shall Mirakl (and its Affiliates, officers, employees, agents and subcontractors), whether in contract, extra-contractual liability, tort (including negligence), breach of statutory duty, or otherwise, be liable for (i) indirect damages, (ii) loss of profits, (iii) loss of use or corruption of software, data or information, (iv) loss of data, (v) loss of sales or business, (vi) loss of or damage to goodwill or reputation, and (vii) the cost of replacing the Mirakl Ads Website due to the inability to use the Mirakl Ads Website, even if Mirakl has been notified of the possibility of such damages.

6.3. Limitation of Time to File Claims. The Parties hereby expressly agree that any action by either Party under these General Terms of Use or in connection with the Mirakl Ads Website must be brought within one (1) year after the cause of action arose or such later time when a continuing or latent action ceases or is discovered (or should reasonably have been discovered), otherwise such cause of action or claim is permanently barred.

6.4. Risk Allocation. These provisions establish a distribution of risk between User and Mirakl. The price agreed upon by the Parties reflects this allocation of risk as well as the limitation of liability described above.

ARTICLE 7. INTELLECTUAL PROPERTY RIGHTS

The Mirakl Ads Website and all its elements which are made available to Users, in particular trademarks, logos, photographs, programs, source codes, data, databases, animated or non-animated images, sounds, drawings, graphics, videos or texts, downloadable resources from the Mirakl Ads Website, layout, appearance, structure, as well as any other element not related to links towards third-party websites, are the property of Mirakl or its licensors.

All these elements are subject to the provisions of French and international regulations applicable to intellectual property and, consequently, are protected against any use not authorized by the law or these General Terms of Use.

Mirakl grants to each User a personal, non-exclusive, and royalty-free license to use the Mirakl Ads Website, for its own use and for the sole purpose of subscribing to and using the Mirakl Ads Website.

Subject to the rights of use granted to User by Mirakl, hereunder, User's use of the Mirakl Ads Website does not imply any license or transfer of rights relating to the elements of the Mirakl Ads Website to User. In particular, any copy, reproduction, representation, adaptation, modification, distribution of all or part of the Mirakl Ads Website as well as all or part of its content, by any process whatsoever and on any medium whatsoever is forbidden, unless User obtained the prior, express and written authorization of Mirakl..

Failure to comply with these stipulations, in particular for the purposes of commercial exploitation, may be subject to prosecution on the basis of an infringement action and/or an action for unfair competition and/or parasitism from the holders of the rights in question. This is without prejudice to Mirakl's other rights, in particular the right to obtain compensation for damages.

MIRAKL ADS WEBSITE – General Terms of Use

version 01/01/2023

ARTICLE 8. CONFIDENTIALITY

The Party receiving Confidential Information agrees that, for the duration of these General Terms of Use and for a period of five (5) years after their termination or expiration for any reason whatsoever, any Confidential Information provided by the disclosing Party shall:

- be protected and kept strictly confidential, and be handled by the receiving Party with the best level of care and protection;
- be disclosed only to the receiving Party's employees, contractors, subcontractors and/or agents who need to access such information and are bound in writing by confidentiality obligations at least as protective as those stipulated herein, and shall be used by them only for the purposes contemplated hereunder;
- not be used by the receiving Party, in whole or in part, for any purpose other than as set forth in this article without the prior written consent of the disclosing Party. In particular, Confidential Information shall not be sold, transferred, rented or commercially exploited; and
- not be copied, reproduced, or duplicated, in whole or in part, by the receiving Party except (i) for the purpose of performing its contractual obligations herein and/or (ii) if expressly approved in writing by the disclosing Party.

The confidentiality obligations defined in this article shall not apply to Confidential Information:

- which has entered the public domain, except where such entry is the result of a Party's breach of the provisions of this article;
- which, prior to disclosure hereunder, was already in the receiving Party's possession without restriction, as evidenced by the receiving Party's written records predating the date of disclosure;
- which was lawfully received from a third party without restrictions and not in breach of confidentiality provisions protecting the Confidentiality Information;
- which was developed independently by the receiving Party, as demonstrated by the receiving Party by written records predating the date of disclosure, without violating any confidentiality obligations toward the disclosing Party;
- whose use or disclosure has been authorized in writing by the disclosing Party; or
- which may be disclosed by the receiving Party pursuant to the lawful request or order of a court, tribunal or governmental agency or where required by operation of law; provided, however, that the receiving Party will: (a) take reasonable steps to assess the validity of such request or order; (b) if the disclosing Party can be notified under such request or order, promptly notify the disclosing Party to allow the disclosing Party to seek for a protective order or similar judicial constraint and make reasonable efforts to cooperate with the disclosing Party in its efforts to respond to such request or order (at the disclosing Party's request and sole expense); or (c) if notification is not allowed, take reasonable steps to limit disclosure to only that portion of the disclosing Party's Confidential Information required to be disclosed under such request or order.

In addition, each Party may disclose, in strict confidence, the other Party's Confidential Information (a) to its lawyers, insurance brokers, and auditors, (b) where such disclosure is necessary to implement or prove the existence of rights under these General Terms of Use, and (c) for Mirakl, to its Affiliates.

ARTICLE 9. PERSONAL DATA

Mirakl will process the Personal Data of Users in compliance with Data Protection Laws applicable to Mirakl in the context of the provision by Mirakl of the Mirakl Ads Website, as described in the Mirakl Ads Website – Privacy Policy which can be found at retailmedia.mirakl.net/web/privacy-policy.

ARTICLE 10. TERMINATION OF THESE GENERAL TERMS OF USE

10.1. Term. Access to the Mirakl Ads Website is effective from the date of creation of the Account and will remain in effect until terminated by either Party in accordance with the conditions set forth below.

10.2. Suspension. Without giving rise to any claim for damages, Mirakl reserves the right, at its own discretion, to suspend in whole or in part access by User to the Mirakl Ads Website for any reason, and in particular in the event:

- User inappropriately uses the Mirakl Ads Website;
- Information provided by User is deemed to be false, incomplete or outdated;
- User fails to comply with these General Terms of Use or any other contractual document; or
- User is suspected of fraud or threatens the security of the Mirakl Ads Website.

In case of suspension by Mirakl of a User's Account, Mirakl shall be entitled to suspend all Accounts that were created by the suspended User and/or all other Accounts of the relevant Publisher or Advertiser.

10.3. Termination. These General Terms of Use may be terminated:

- by User, at any time, directly through the Mirakl Ads Website by deleting its User account; or
- by Mirakl, provided a written notice of termination is sent to User or the relevant Publisher at least one (1) month prior to the date of termination.

10.4. Termination for Breach. Mirakl may terminate these General Terms of Use if User commits a breach of any term of these General Terms of Use and fails to remedy that breach within thirty (30) days of User being notified of such breach in writing by Mirakl (which may be provided by e-mail). During the aforementioned remediation period, Mirakl may, at its sole option, suspend in whole or in part the access to the Mirakl Ads Website until complete remediation of the breach by User. In the event of material or repeated breaches and in case of failure by User to comply with a legal or regulatory obligation, Mirakl may terminate these General Terms of Use by giving written notice to User with immediate effect.

10.5. Post Termination. Upon termination, Mirakl will cease to provide the Mirakl Ads Website to User, and User shall no longer have any right to access and use the Mirakl Ads Website. Subject to Mirakl's sole discretion, Mirakl may also cease to provide the Mirakl Ads Website to all Users whose Account was created by the terminate User, as well as to all other Users of the relevant Publisher or Advertiser. Any articles of these General Terms of Use which by their nature are intended to survive termination, as well as any articles which expressly stipulate that they shall survive termination, shall survive any such termination.

ARTICLE 11. MISCELLANEOUS

11.1. Assignment. Subject to applicable law, User agrees that these General Terms of Use, binding User to Mirakl, may be assigned, transferred or provided by Mirakl, in any way, (i) to a third party, or (ii) in connection with a merger, acquisition, or sale of all or substantially all of its assets.

11.2. Governing Law and Jurisdiction. These General Terms of Use will be governed by the laws of France, without regard to its conflict of laws principles. The Parties expressly exclude the enforcement of the United Nations Convention on Contracts for the International Sale of Goods, all national laws aimed at implementing this convention as well as the rules of conflict of law which may be enforceable. In the absence of mutual agreement between the Parties, the Paris Commercial Court shall have jurisdiction to rule on any dispute occurring between the Parties with regards to these General Terms of Use's construction or performance, notwithstanding multiple defendants, or introduction of third parties, even for protective, summary or motion procedures.

MIRAKL ADS WEBSITE – General Terms of Use

version 01/01/2023