

General Terms and Conditions (GTC) for using “Newsletter2Go”

§ 1 Scope, Basic Principles

(1) These GTC shall apply to all services and agreements between the Operator and the Client in connection with the services offered on the website

www.newsletter2go.de, www.newsletter2go.com, www.newsletter2go.at,

www.newsletter2go.ch, www.newsletter2go.pl, www.newsletter2go.nl,

www.newsletter2go.ca, www.newsletter2go.com.br, www.newsletter2go.es, www.newsletter2go.it, www.newsletter2go.fr, www.nl2go.de or www.newslettertogo.de.

(2) No other GTC or similar terms of contract of the Client shall apply. The Operator expressly objects to their application. Individual agreements precede these GTC. Additional information can be found in the help / FAQ section

(3) The services of Newsletter2Go are addressed to entrepreneurs within the meaning of § 14 BGB [German Civil Code]. The Operator does not conclude any contracts with private consumers within the meaning of § 13 BGB [German Civil Code].

§ 2 Definitions

The following definitions shall apply to these GTC:

- “**Operator**” shall mean Sendinblue GmbH. For further information please see our legal info.
- “**Newsletter2Go**” shall mean the service offered by the Operator on the websites www.newsletter2go.de, www.newsletter2go.com, www.newsletter2go.com,

www.newsletter2go.at, www.newsletter2go.ch, www.newsletter2go.pl,
www.newsletter2go.nl,

www.newsletter2go.ca, www.newsletter2go.com.br, www.newsletter2go.es, www.n
ewsletter2go.it, www.newsletter2go.fr, www.nl2go.de or www.Newslettertogo.de

which enables the temporary use of a Software as a Service (SaaS) software solution that allows to design and manage email and SMS Newsletters, send them out to the respective Client's contacts and evaluate them.

- **“Client”** shall mean anyone who registers on the website of the Operator.
- **“Recipient”** shall mean any (natural or legal) person or persons who receives or receive an email or SMS that has been send out and / or designed by the internet portal of the Operator or by the service offered under the name “Newsletter2Go”.
- **“Third Party”** shall mean any (natural or legal) person or persons who is / are not Clients, including Recipients. The Operator is not a third party.
- **“Anyone”** shall mean Clients, Recipients and Third parties.
- **“Newsletter”** shall mean electronic messages with advertisement and / or information, which shall be sent out via email or SMS.
- **“Credits”** shall mean the right to use Newsletter2Go to a specific extent, i.e. to be able to send out a specific number of emails or SMS to Recipients by using Newsletter2Go, which is usually gained against payment. There are separate email Credits and SMS Credits, which allow the sending of Newsletter in the respective mode of transmission (via email or SMS) and cannot be traded, set off or passed on. One Credit allows to send one message to one Recipient (1 Credit = 1 Newsletter x 1 Recipient x 1 mode of transmission).
- **“Client data”** shall mean all personal or company-related data that a Client discloses during registration or at any later stage.
- **“Templates”** are customizable Newsletter layouts
- **“Predictable maintenance work”** shall mean any maintenance and update work that is foreseeable and can be planned. For example, attacks on the systems of the Operator by third parties, hardware failures without fault of the Operator or cases of force majeure are not foreseeable and cannot be planned.

§ 3 Conclusion of contract, power of representation

(1) A contract of use is concluded once the Client receives a confirmation by the Operator of the conclusion of a user contract, thus activating the account to send out Newsletters, after registering on Newsletter2Go (for example by providing his email address and a self-chosen password), receiving a confirmation of registration (for example via email) and finalizing the registration (for example by clicking on a confirmation link). The Operator will confirm the registration and the conclusion of a user contract immediately electronically to the address provided by the Client. The contract can be concluded in either German or English languages.

(2) Before the contract is concluded and Newsletters can be send out for the first time, the Client has to complete his Client data and wait for activation by the Operator. The Client must provide all necessary data truthfully and correctly and must keep his Client data up to date at all times. The Operator is entitled to demand at any time suitable proof of the Client's identity, his business, the identity of any other person acting on behalf of the Client or their power of representation or to make the use of individual functions subject to such provision.

(3) Newsletter2Go can be used to a limited extent free of charge. Apart from that, the Client can use the Newsletter services against payment in two different ways:

– **Prepaid (email or SMS):** The Client buys a certain amount of Credits and can use Newsletter2Go to the respective extent, i.e. send a certain amount of emails or SMS to Recipients through Newsletter2Go. There are separate email Credits and SMS Credits which allow the sending of Newsletter in the respective mode of transmission (via email or SMS) and cannot be traded, set off or passed on. One Credit gives the right to send one message to one Recipient. The Prepaid Credits that are made available expire in a timeframe of two years, starting from the time of order.

– **Subscription (email only):** The Client purchases a certain number of Credits for a period of one month, beginning from a point in time he/she chooses (billing period) and can use Newsletter2Go to the respective extent in this period, i.e. send a certain number of emails to Recipients through Newsletter2Go. Unused email Credits expire at the end of the billing period. Change of tariff and cancellation of a subscription can be declared to the end of each billing period (according to §13). In case the subscription is not cancelled to the end of the billing period, the subscription will be extended with costs for another billing period. – One Credit allows to send one message in the

respective mode of transmission (email or SMS) to one Recipient (1 Credit = 1 Newsletter x 1 Recipient x 1 mode of transmission). The current price list can be found under. The purchase of Credits is binding once the Client has chosen the product and mode of payment and then clicked on the button “buy now”.

(4) Mistakes in the data entered can be noticed and corrected in the respective entry mask. Mistakes in regards to the purchase of Credits can no longer be corrected after the Client has clicked on “buy now”. Mistakes in the data of a Client’s company can afterwards be corrected in his account at any time.

(5) The Client receives the contract conditions, including these GTC during registration in text form and can save or print them. The Client can furthermore view most of the contract conditions in his account on www.newsletter2go.de, www.newsletter2go.com, www.newsletter2go.com, www.newsletter2go.at, www.newsletter2go.ch, www.newsletter2go.pl, www.newsletter2go.nl, www.newsletter2go.ca, www.newsletter2go.com.br, www.newsletter2go.es, www.newsletter2go.it, www.newsletter2go.fr, www.nl2go.de or www.Newslettertogo.de.

(6) The Operator is certified partner of Certified Senders Alliance (CSA). Further information on CSA can be found in our FAQ and on www.certified-senders.eu.

(7) Only the management board or their staff with written proof of power of representation are entitled to make changes to the GTC, to grant warranties or to assume a procurement risk.

§ 4 Subject of contract, Services offered by the Operator

(1) The Operator provides the Client with the opportunity to design, manage, send and evaluate email and SMS Newsletters to the Client’s contacts by the temporary provision of a software solution (so-called Software as a Service, SaaS) on the internet platform www.newsletter2go.de, www.newsletter2go.com, www.newsletter2go.com, www.newsletter2go.at, www.newsletter2go.ch, www.newsletter2go.pl, www.newsletter2go.nl, www.newsletter2go.ca, www.newsletter2go.com.br, www.newsletter2go.es, www.newsletter2go.it, www.newsletter2go.fr, www.nl2go.de or www.Newslettertogo.de. The scope of services for the compilation, sending and evaluation of Newsletters as well as for the management of Recipients depends on the description of services [<https://www.newsletter2go.com/features/>] in the version which is valid at the time of conclusion of the contract.

(2) Anybody can get a free demo version of Newsletter2Go without conclusion of a contract upon the sole discretion of the Operator. The demo version shall only provide a first impression and does not reflect the entire services of Newsletter2Go. In particular, the sending out of Newsletters and storage of data on the system of the Operator is only possible for Clients with valid user's contract.

(3) The scope of usage of Newsletter2Go can be determined by the Client between the two options of prepaid and subscription (see § 3 (3) above).

(4) The Operator is allowed to make any changes of content or functionality (for example in regards to patches, updates or modifications) that are reasonable in consideration to the Client's interest. The Operator is also allowed to delegate his services in part or in whole to be rendered by third parties, especially subcontractors.

§ 5 Additional services of the Operator

(1) The Operator also offers additional services (for example the design of Newsletter templates, responsive design, inbox testing) which can be purchased in the same procedure as the purchase of Credits by clicking on the button "buy now" unless they are free of charge.

(2) **Design of an individual Newsletter template for a Client:** After purchase of this additional service at cost, the Client receives a questionnaire from the Operator on the content and design of the template (for example in regards to the logo, menu items, etc.). After replying and submission of the relevant objects (for example graphics, pictures, logos, texts) by the Client, the Operator will compile a draft design. Upon receipt of the draft, the Client will accept the draft or communicate to the Operator any requests for corrections. The Client is entitled to two free revisions, which will proceed under the following conditions: the suggestions have to include any and all items to be changed by the Operator. In this case, an altered draft will be presented to the Client within a reasonable timeframe. The Client can accept the altered draft or communicate further requests for correction, these however may only refer to the corrections made by the Operator. Requests for further alteration or other additional significant services on request by the Client (such as the creation of graphics) are subject to a separate assignment. The extra costs of such will be charged separately according to the usual fees of the Operator.

The legal rights of use for all ordered templates are only for Newsletter2Go services. Explicitly, the templates must not be saved to separate servers or used with different service providers. The newsletter templates must be paid for after the Client accepts the design (para. 2) or immediately after the order, if the design is not part of the service.

(3) **Client Testing:** After booking of this additional service at cost, the Operator provides a client or inbox test for the Client, i.e. the Operator tests and supports the Client continuously so that his Newsletters are preferably displayed well in 38 email programs and web Clients.

(4) **Recommendation engine:** After booking of this additional service at cost, the Client can continuously add tailored product recommendations into his Newsletters. To this end, the Client first has to install the Newsletter2Go recommendation engine via Javascript or Plugin. He can then integrate relevant modules for product recommendation into his Newsletters and adjust them to his layout. Depending on the kind of recommendation chosen by the Client for the Recipient, it may be required that the Client obtains a separate permission by the Recipient.

§ 6 Availability of services, maintenance work, receptability of Newsletters

(1) The Operator warrants availability of Newsletter2Go of 98%, viewed on a quarterly basis, not including down time that is not caused by breach of duty of the Operator, for example attacks on the system of the Operator by Third parties, hardware failures without fault of the Operator or cases of force majeure and unplanned maintenance work linked to such.

(2) Predictable maintenance work is regularly done between 10pm and 6am and are announced to the Client at least three days prior via email. Predictable maintenance work will limit the availability of Newsletter2Go only for a maximum period of 10 hours per calendar month.

(3) When sending out a Newsletter, any obligation of the Operator ends with the Newsletter leaving the system of the Operator in due form. The Operator does not warrant actual arrival of the Newsletter at the Recipient or that there will not be any errors in receipt, as long as such are not caused by a failure of Newsletter2Go or a subcontractor appointed by the Operator but by circumstances beyond the Operator's sphere. Errors in receipt beyond the sphere of control of the Operator are in the case of emails for example cases of the email being redirected by a SPAM filter, the inbox being full, the email address not existing or being wrong or being listed on a so-called Robinson list and in case of SMS for example cases in which the end device is switched

off, does not have network access, does not have storage available, the number does not exist or is listed on a so-called Robinson list. In case of errors in receipt which are beyond the Operator's sphere of control, the Client's obligation to pay the respective fee shall remain unaffected.

(4) The Client shall be responsible to ensure that the prerequisites for using Newsletter2Go (for example in regards to usage of a current version browser) are met, kept, maintained and if appropriate, updated. Further information can be found in the FAQ section of the Operator. The Operator is not responsible for any components of Client or telecommunication connections between the Client and Newsletter2Go up to the point of transfer.

§ 7 Rights of use

(1) The Operator grants to the Client the right to use Newsletter2Go by remote access to the system of the Operator in accordance with its intended use, limited to the duration of the user contract. This right is not exclusive and must not be transferred or sub-licensed.

(2) When an individual draft Newsletter is designed (see § 5 (2)) by the Operator, the Client is also granted a simple, non-exclusive right of use, in which case the services of the Operator for the Newsletter templates are granted indefinitely and inclusive of the authority to make changes to the Newsletter template. Restrictions to the legal right of use are valid according to § 5 (2).

(3) The Client must not use Newsletter2Go in excess of the agreed scope, let third parties use it or make it accessible for third parties.

§ 8 Fees and Payment

(1) The Client has to pay a fee for each sending of a Newsletter per email or SMS. To this end, the Client previously purchases a certain amount of Credits. One Credit allows to send one message in the respective mode of transmission (email or SMS) to one Recipient (1 Credit = 1 Newsletter x 1 Recipient x 1 mode of transmission). Credits purchased by the Client will be used up by the FIFO principle (first in, first out), i.e. in the order of purchase.

(2) Subscription services of the Operator are payable at the beginning of every billing period, at which point the respective Credits need to be cashed. Any unused services of the Operator of

email Credits not used at the end of a billing period or email credits expire at the end of the billing period, i.e. at the end of the billing month. A transfer does not take place.

(3) Any additional services (e.g. design of individual Newsletter templates, Client testing) have to be paid for by the Client according to the respective agreement. Additional services can be payable on a rolling basis (e.g. monthly) or with one-off payments at the beginning of the respective service or later. The amount and the mode of payment will be agreed on at the time of booking of the additional service.

(4) The prices are based on the respective data available on Newsletter2Go.

(5) The prices are, if not explicitly stated otherwise, stated as net prices and have to be understood plus VAT at the statutory rate.

(6) The Client can usually pay using PayPal, SOFORT transfer, bank transfer or payment by direct debit. The Client is not entitled to claim the provision of any certain mode of payment.

(7) A refund of unused Credits is generally not possible.

(8) If a payments can not be processed or is cancelled due to any breach of duty of the Client (e.g. direct debit is booked back due to lack of funds available) the Client will refund the Operator for any loss caused by this.

(9) Electronic invoices without a physical signature have been valid since 2011. The Operator can settle invoices in this manner.

§ 9 Client obligations on data protection laws and competition laws; Penalty clause

(1) The Operator and the Client shall comply with the statutory regulations on data protection, especially according to TMG (German *Telemediengesetz*, Telemedia Law) of the Federal Republic of Germany and GDPR (General Data Protection Regulation) of the European Union.

(2) The Client remains in control of his Client data and gives instructions to the Operator on the processing of order data according to a separate agreement in writing. The Operator is obliged to delete the entire data of the Client and / or parts thereof upon instruction by the Client, unless the Operator is entitled or obliged to store the data for legal reasons. The same shall apply if storing the data is necessary for any demonstration or proof of any contravention or breach of duty of the Client and / or is legitimately requested by any authority, court or other institution.

(3) The Client assures that he has obtained any and all consent necessary for his actions on Newsletter2Go from the Recipients, data subjects or Third parties, in regards to data protection or other. This especially applies to the authorisation to save and use any data on Newsletter2Go, including for the sake of their evaluation, if consent is needed. If the Client uses any of the optional services for Tracking (in regards to Newsletters being opened, clicks made, Geolocating, etc.) on Newsletter2Go, consent of the Recipient or legal permission is required for this; in case of doubt on these the Client is obliged to deactivate the optional Tracking services.

(4) The Client assures explicitly that he has explicit and valid consent of the respective Recipient for the receipt of advertisement or commercial communication in the mode of transmission chosen by the Client (email or SMS) for every Newsletter sent.

The Client shall pay a penalty for every culpable breach of this obligation, if this breach leads to a legitimate complaint from the data subject, a competitor, or any other legitimate plaintiff.

These penalties are in the amount of:

- 40.00 EUR in the case of a complaint from an email recipient at Newsletter2Go, if it results in a processing effort for Newsletter2Go;
- 500.00 EUR in the case of a written warning from an email recipient, a competitor, or an association; or
- 5,001.00 EUR in the case of a complaint at the Certified Senders Alliance, which can result in a penalty or the loss of whitelist status.

If several such complaints arrive at Newsletter2Go due to a Client's email campaign, Newsletter2Go is entitled to determine a reasonable aggregated penalty in reference to the aforementioned amounts. The amount of this penalty can be reviewed by the relevant court on behalf of the Client in the event of a dispute.

According to this paragraph, associations are the locus standi institutions, according to § 8 sec. 3. Newsletter2Go has the right to claim damages. In this case, the contractual penalty will be calculated towards the damages.

(5) Upon request, the Client shall – as permitted – submit in text form the respective declarations of consent and all other information necessary (e.g. information on the consent declared (date,

time, IP address, lack of revocation), on the process of giving consent (e.g. opt in procedure) or in regards to other authorisation of the Client).

(6) The Operator is entitled to remove or block email addresses from the mailing list of the Client (entry on blacklist) once a so-called hard bounce has occurred on this email address.

(7) Irrespective on further contractual obligations and national or European Union regulation, the Client is obliged to respect and comply with the current minimum requirements of Certified Senders Alliance (CSA).

§ 10 Further Client obligations

(1) The Client shall support the Operator in the execution of the contract as appropriate. The Client shall especially supply in a timely manner all information, data and documents required for the provision of the contractual services that have been agreed on or are otherwise required.

(2) The Client shall always behave lawfully when using Newsletter2Go.

(3) The Client shall

- not compile, save or send any pornographic, discriminatory, immoral or illegal contents or contents that glorify violence or that endanger youth or public order via Newsletter2Go;
- not violate any intellectual property (e.g. of photos, graphics), trademark (e.g. Logos) or related rights (e.g. industrial designs) or any other legally protected properties of the Operator or third parties (e.g. personal rights);
- observe and comply with all applicable legal information requirements, e.g. in regards to legal notices (§ 5 TMG), to commercial communication (§ 6 TMG) and to the revocability of consent and unsubscrition from emails;
- make back-up copies of all data and contents transferred to Newsletter2Go or changed there and keep them up do date continuously, at least once a day;
- provide a contact person with a phone number and email address for complaints of Recipients or the Operator. The reaction time shall be a maximum of 24 hours on working days;
- to install with himself the necessary IT security mechanisms (e.g. software, hardware, operating system) to prevent an attack or transfer of malware (e.g. viruses, worms, Trojans, spyware);

- diligently choose and regularly change his password, so that it can not be guessed by trial and error or otherwise;
- keep his log in data secret, especially his password and only supply it to persons who are in charge of designing, managing or sending of Newsletters and have power or representation towards the Operator;
- immediately change his password and immediately notify the Operator in case of danger that or in case the Client finds out that persons not authorised by the Client know the password or have accessed his account.

(4) The Client shall indemnify the Operator from any and all claims and demands of third parties which result from culpable breach of his obligations under § 9 (1), § 9 (3), § 9 (4), § 10 (2) and § 10 (3) or any other infringement of the Client. This also includes all legal costs and expenses.

(5) Advertising numbers of premium services (e.g. in Germany (0)900 numbers) and other additional services shall only be allowed with written consent of the Operator.

(6) The Client shall test the services of Newsletter2Go for plausibility and obvious faults upon beginning of use and again upon every change and shall reprehend such immediately. The Client shall furthermore follow all instructions and advice of Newsletter2Go, especially according to the FAQ, only appoint qualified personnel, conduct regular controls of his use of Newsletter2Go and document the results of such controls.

§11 Refusal of performance, Blocking

(1) The Operator is entitled to limit the customer's use of Newsletter2Go, especially to block the function of sending, if there is any indication that the Client acts in violation of any legal provisions, rights of Third parties or contractual obligations. The Client can avert such measures or the blocking by providing relevant proof of that the existing indication is false or by providing an adequate security.

(2) The right to terminate the contract of both contracting parties shall remain unaffected by the refusal of performance or the blocking.

§ 12 Warranty and Liability of the Operator

(1) The provisions of this § 12 in regards to liability and warranty of the Operator shall apply for all claims of the Client because of fault, to damages or any substitute claims resulting from or standing in connection with the execution of this contract and cases of liability, irrespective of their legal ground (e.g. warranty, default, impossibility, any breach of duty, impediment to performance, tort, etc.), apart from claims of the Client .

- because of damages resulting from loss of life, bodily injury or damage to health;
- in case of fraudulent concealment of a fault by the Operator or because a characteristic is missing for which the Operator has assumed a guarantee for a specified quality
- which result from wilful or grossly negligent behaviour of the Operator, any of his bodies or any of his leading staff as well as
- resulting from the German Product Liability Act.

For these exemptions, only the statutory regulations shall apply

(2) The Operator warrants technical availability of the services only in accordance with the regulation of § 6. The Operator does not assume any responsibility for any errors within external networks that the Operator is not culpable for. Possible warranty claims of the Client expire within 1 year of delivery or acceptance if an acceptance if legally required. § 377 of the German Commercial Code (*Handelsgesetzbuch*, HGB) applies to all services that include warranty, especially in regard to approval according to § 377 (2) and (3) HGB.

(3) The Operator is liable for property damage and financial loss caused by negligence only in case of breach of an essential obligation, i.e. an obligation whose fulfilment is vital for the proper execution of the contract and on whose fulfilment the customer can regularly rely on, but limited to compensation of the typical damage that was foreseeable at the time of conclusion of the contract.

(4) In all remaining cases, the Operator accepts no liability for slight or normal negligence.

(5) Liability of the Operator regardless of fault for defects already existent at the time of conclusion of the contract, as provided for by statutory laws such as in respect to tenancy law and other usage situations (cp. § 536a Abs. 1 Alt. 1 BGB [German Civil Code]), are explicitly excluded.

(6) Subsections (1) to (5) shall also apply in case of liability of a legal representatives and / or

vicarious agents of the Operator.

(7) Statutory regulations regarding the limitation of liability of the Operator (e.g. § 8 – 10 TMG) shall remain unaffected by this §12.

§ 13 Duration of contract, Termination

(1) The user contract shall be concluded for an unlimited amount of time as a framework agreement. Both parties can terminate the contract with a notice of one day to the end of the following day. The right to extraordinary termination for good cause shall remain unaffected. Termination of the user contract shall cause termination of additional agreements (e.g. subscriptions). The termination shall be declared in text form.

(2) Subscriptions of the Client and ongoing additional services (e.g. Client testing, recommendation engine) are agreed on for the respective billing period (contract month) bindingly. These can be cancelled or changed with notice of one day to the end of the billing period on Newsletter2Go or otherwise (e.g. via email); the user contract as framework agreement shall remain unaffected by such changes of subscription. If a subscription or an ongoing additional service is not cancelled in due time and manner, the subscription to this service shall be renewed for the same price for one more billing period (contract month).

§ 14 Process after termination

(1) The data provided by the Client and the Client profile or account will be deleted by the Operator upon termination of the user contract; in case of termination by the Operator, the Client will be given two weeks time to view and back up his Client data saved on Newsletter2Go (depending on his data as Excel, CSV or PDF files). In case the Operator is authorized to not delete data for legal or other reasons, he may alternatively block them; they will be deleted once this authorization ceases.

§ 15 Final provisions

(1) The Operator may use the name and / or the logo of the Client as a reference on Newsletter2Go and on other advertising material for the duration of the user contract. The Client can revoke this permission at any time with an appropriate notice period to allow for the adjustment.

(2) The Operator may change these GTC at any time with a notice period of two months by notification to the Client in text form. The Client can object to such change within one month of receipt of the notification according to sentence 1 by a notification in text form to the Operator. If no objection is made, the change will be taken as accepted by the Client. The Operator will inform the Client of the effect of approval according to sentence 2 with each notification according to sentence 1.

(3) In case the Client is a merchant, a legal person under public law, or a special asset (Sondervermögen) under public law, exclusive legal venue shall be Berlin (Charlottenburg).

(4) Berlin (Charlottenburg), Germany, shall further be exclusive legal venue wherever the Client has no general venue in Germany.

(5) The laws of the Federal Republic of Germany shall apply exclusively with exception of UN CISG (UN Convention on Contracts for the International Sale of Goods) of 11th April 1980.

25. March 2018