



## GENERAL TERMS AND CONDITIONS USER LICENCE "DO NOT CALL ME" LIST

### **Introduction**

In these terms and conditions, the following terms shall have the following meaning:

- **Subscriber:** Any natural person or legal entity using an electronic communications service under a contract entered into with a telecom operator;
- **CUSTOMER:** A natural person or legal entity wishing to carry out telemarketing as part of a direct marketing campaign on its own behalf or as a Service Provider;
- **Deduplication:** The comparison of two lists to eliminate duplicates;
- **"Do-Not-Call-Me" list:** The list of telephone numbers of the subscribers who do not wish to be called for direct marketing purposes;
- **User Licence:** The non-exclusive and conditional right to use the telephone numbers included on the "Do-Not-Call-Me" list;
- **"DNCM" Platform:** The e-platform where subscribers can register for the "Do-Not-Call-Me" list, and which the customers can use in the context of a User Licence;
- **Do Not Call Me:** The not-for-profit association Do Not Call Me (abbreviated to DNCM), Raketstraat 50, 1130 Brussels
- **Service Provider:** A natural person or legal entity responsible for carrying out the deduplication of a list intended for a telemarketing campaign on behalf of a third party (advertiser). This includes contact centres working on behalf of advertisers, e-service providers responsible for preparing telemarketing lists on behalf of advertisers, etc.
- **Website:** [www.dncm.be](http://www.dncm.be)

### **Orders**

1. Any order placed via the "DNCM" Platform shall imply a formal acceptance of these General Terms and Conditions, to the exclusion of any application of those of the CUSTOMER.
2. This provision may only be derogated from by way of a formal document signed by both parties.

### **"DNCM" Platform.**

3. Articles VI 111 to VI 114 and Articles XIV 78 and 81 of the Belgian Code of Economic Law require all telecom operators to keep a list of the telephone numbers of their subscribers who do not want to be called for direct marketing purposes. The King may approve an association that is entrusted with the management of a single list on behalf of all telecom operators.
4. The not-for-profit association Do Not Call Me was approved by Royal Decree for the management of the "Do-Not-Call-Me" list.
5. Each CUSTOMER shall be obliged to use the "Do-Not-Call-Me" list to deduplicate its own direct marketing list.
6. To be able to use the "Do-Not-Call-Me" list, the CUSTOMER must accept these General Terms and Conditions.



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7. The user licence granted is non-exclusive and non-transferable, and will be issued upon payment. The fees are published on the website. The telephone numbers on the “Do-Not-Call-Me” list may only be used within the framework of the licence granted.

### **Procedure**

8. To gain access to the “Do-Not-Call-Me” list, the CUSTOMER must register its company on the [www.dncm.be](http://www.dncm.be) website. The CUSTOMER will have to create a login name and password. The login name and password are strictly private and confidential. The CUSTOMER undertakes to keep its login details safe and not disclose them to third parties. Under no circumstances shall Do Not Call Me be held liable for the disappearance, loss, theft, or unauthorised use of the CUSTOMER’s login details. In such an event, the CUSTOMER undertakes to notify DNCM vzw as soon as possible so that the licence can be blocked immediately.
9. Upon acceptance of the General Terms and Conditions, DNCM will issue its invoice. Access to the “Do-Not-Call-Me” list will be activated upon receipt of payment.

### **Licences**

10. The licence fee will depend on the number of employees (either up to 250 employees or over 250 employees) and the type of company:
  - *Advertisers*: Those wishing to approach consumers/companies as part of a campaign.
  - *Service Providers*: Those who, on behalf of an advertiser, process call files and/or perform call actions (call centres, data companies).

If the CUSTOMER selects the wrong company form and/or states an incorrect number of employees, DNCM shall be entitled to adjust the invoice.

### **Use of addresses/data**

11. The CUSTOMER undertakes to use the “Do-Not-Call-Me” list only for the purposes referred to in Articles VI.111 to 115 of the Belgian Code of Economic Law on market practices and consumer protection, and in particular to remove from its list of telephone numbers intended for a direct marketing campaign all the telephone numbers that appear on the “Do-Not-Call-Me” list. The CUSTOMER shall not use this list for any other purposes.
12. Deduplication using the “Do-Not-Call-Me” list shall be carried out exclusively through comparison of the telephone numbers.
13. The CUSTOMER undertakes not to transfer the “Do-Not-Call-Me” list, in full or in part, to third parties in any way whatsoever, and not to grant access to it to third parties in any way whatsoever.
14. The CUSTOMER also undertakes to take all useful, technical, and organisational measures to ensure the security of the “Do-Not-Call-Me” list, to prevent any unauthorised use or disclosure, and to destroy it after use.
15. The CUSTOMER undertakes to inform Do Not Call Me immediately when it becomes aware of any disclosure of the “Do-Not-Call-Me” list to third parties or of its unauthorised use by third parties.



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16. The CUSTOMER undertakes to start using the “Do-Not-Call-Me” list within five working days after it has been downloaded. After that period, it undertakes to download updated versions of the list.
  17. The CUSTOMER undertakes to transfer/process the “Do-Not-Call-Me” list outside the European Economic Area only under the following circumstances:
    - i. If the relevant data protection legislation is being observed;
    - ii. If the third country is ensuring an adequate level of data protection, either by a decision of the European Commission pursuant to Article 45 of the GDPR or by providing the appropriate safeguards pursuant to Article 46 of the GDPR; and
    - iii. If, to the extent necessary and having regard to case law of the Court of Justice of the European Union, additional measures have been taken in line with recital 109 of the GDPR to provide greater safeguards through the data importer’s contractual obligations (in addition to the standard contractual clauses) to ensure substantially equivalent compliance with the EU level of protection.

#### **Misuse - Inspections**

18. The following conditions shall apply if the CUSTOMER uses the DNCM file for third parties. Do Not Call Me reserves the right to inspect the usage of the various licences. The CUSTOMER undertakes to cooperate with any inspections carried out by Do Not Call Me or an authorised third party, by giving access to any information requested in relation to the inspection, by allowing access to its offices, machines, programmes, or files, and by allowing it to take any copies if necessary.

The CUSTOMER shall be informed of any ad-hoc inspections three working days in advance.

No prior notification shall be given of inspections to be carried out following suspicion of an irregularity or fraud. If an irregularity is found, the inspection costs shall be payable by the CUSTOMER, without prejudice to any sanctions the supervisory authorities may impose.

19. Any unauthorised use of the “Do-Not-Call-Me” list by the CUSTOMER, on the CUSTOMER’s behalf, or by the Service Provider shall give rise to compensation to Do Not Call Me. The term “unauthorised use” of the “Do-Not-Call-Me” list is understood to mean that the list is used for other purposes than those listed in these General Terms and Conditions, that the “Do-Not-Call-Me” list is being communicated to a third party who does not have a valid user licence, or that a licence is being used without compliance with its terms of use.
20. Furthermore, the telecom operators authorised by Do Not Call Me to manage the “Do-Not-Call-Me” Platform and the competent supervisory authorities shall be notified of any unauthorised use of the “Do-Not-Call-Me” list so that they can impose the appropriate sanctions.

### **Confidentiality**

21. Do Not Call Me must not under any circumstances disclose to any third party the information acquired in the context of this licence agreement, without prejudice to the provisions in the section on “unauthorised use” and without prejudice to its right to compile anonymous statistics about the use of the “Do-Not-Call-Me” Platform.
22. The preceding paragraph shall not apply in the event of an inspection carried out by a supervisory authority. It shall also not apply to data in the public domain, data already known to Do Not Call Me prior to their disclosure by the CUSTOMER, and data legitimately acquired by Do Not Call Me from a third party not bound by similar confidentiality requirements.

### **Fees and payment**

23. The fees that apply to the licences are those shown on the [www.dncm.be](http://www.dncm.be) website at the time when the agreement is entered into.
24. The above fees are exclusive of VAT. Any VAT and other indirect taxes, regardless of their nature, that an authority may levy for the use of the “Do-Not-Call-Me” Platform, shall always be payable by the CUSTOMER and, if necessary, become due in addition to the above-mentioned fees.
25. The CUSTOMER must settle the invoices issued by Do Not Call Me **before activation of the licence** by bank transfer to the account number specified by Do Not Call Me. The CUSTOMER shall send **proof of payment** by e-mail to the appropriate contact person, upon which the licence shall be activated.
26. If the invoice is not paid, access to the “Do-Not-Call-Me” list will not be activated.
27. Any complaints about an invoice should be addressed to Do Not Call Me by registered letter within 8 (eight) days following the invoice date. This letter must state the date, invoice number, and the reason for the dispute.

### **Warranty and liability**

28. It is expressly agreed that if Do Not Call Me’s liability is at issue in the context of granting a licence, any damages payable by Do Not Call Me shall in no event exceed the annual amount invoiced by Do Not Call Me to the CUSTOMER.
29. Any compensation for immaterial damage or loss of an opportunity to increase profit or turnover shall be excluded, except in the case of gross negligence on the part of Do Not Call Me.

### **Intellectual Property Rights**

30. The rights attached to the “Do-Not-Call-Me” list, including the rights conferred on the database compiler under the Law of 31 August 1998 on the legal protection of databases, shall always be the exclusive property of Do Not Call Me.

### **Force majeure**

31. Neither of the Parties shall be held liable for the non-performance, in whole or in part, of its obligations under the Agreement if such non-performance is due, in whole or in part, to the occurrence of an event of force majeure (as defined below).
32. In the context of this article, all external, unforeseeable, and insurmountable events that prevent the fulfilment of any of the obligations under the General Terms and Conditions, such as natural disasters, wars, acts of terrorism, strikes, shortage of raw materials, shortage of energy, power outages, network failures, or any other similar or unforeseeable event shall be considered Force Majeure.
33. The obligations of the Party invoking a force majeure event shall be suspended from the time of notification of that event to the other Party within twenty-four (24) hours following its occurrence and provided that the Party concerned can demonstrate the factuality of such an event.
34. In the event that the force majeure lasts for more than one (1) month from the notification by the prejudiced Party, as per the previous paragraph, each of the Parties may, subject to an agreement by the Parties on the continuation of the General Terms and Conditions, terminate the General Terms and Conditions ipso jure, without compensation for that which is covered by the force majeure event, as soon as the period of one (1) month has elapsed, as stated above, by simple notification to the other Party.

### **Term, suspension, and termination**

35. The licence agreement will be entered into for the term selected by the CUSTOMER. For Customers (= advertisers), the licence term may be one (1) year or one (1) month.

For Service Providers, the licence term shall always be one (1) year.

Monthly licences must be renewed on a monthly basis. DNCM does not provide automatic renewal.

Each year, the annual licence will be renewed automatically for one year on the same terms unless the CUSTOMER gives DNCM notice of termination (by e-mail or termination via the CUSTOMER's account) at least one month before its expiry date. DNCM undertakes to notify the CUSTOMER, no later than two months before the expiry date of the licence, of the option of cancelling the licence agreement and of the fact that, in the absence of a reaction within the period provided in the General Terms and Conditions, the licence will be renewed automatically as provided for in the General Terms and Conditions

Any changes to the terms in favour of the CUSTOMER (e.g., a fee reduction) shall be considered a continuation of the licence on the same terms and, therefore, shall not affect the possibility of automatic renewal.

36. However, by derogation from the previous paragraph, Do Not Call Me may terminate the agreement prematurely without prior notice of default and without the CUSTOMER being able to claim any compensation:



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- If the CUSTOMER does not comply with its obligations arising from the General Terms and Conditions or the licence agreement (without prejudice to Do Not Call Me's right to seek damages);
  - If the CUSTOMER misuses or is suspected of misusing the "Do-Not-Call-Me" list;
  - If the CUSTOMER is declared bankrupt, is manifestly insolvent, applies for a suspension of payment, ceases trading, has all or a substantial part of its assets seized, is placed in receivership, or goes into liquidation (judicially or voluntarily);
  - If there is a change in the law affecting the "Do-Not-Call-Me" list or if another association is approved for maintaining a central list similar to the "Do-Not-Call-Me" list, in accordance with the provisions of Article 100/4 of the Law of 6 April 2010 on market practices and consumer protection.

37. In the event of termination of the Agreement for whatever reason, the "Do-Not-Call-Me" list and all its data shall be destroyed by the CUSTOMER, who will then no longer be able to use them. In the event of early termination of the licence during its term for whatever reason, no pro-rata fee shall be refunded to the CUSTOMER.

#### **Applicable law and final provisions**

38. The General Terms and Conditions shall be governed by and interpreted in accordance with Belgian law.
39. Any dispute concerning the validity, interpretation, execution, or termination of the General Terms and Conditions, the agreements, or related subsequent acts shall fall under the exclusive jurisdiction of the courts of the judicial district of Brussels.