

Wiland General Terms and Conditions

The following terms and conditions (“Terms”) apply to any products and services that Client orders from Wiland, and these Terms are made part of any such order:

1. Scope of Terms. Wiland will provide products and services to Client in accordance with the Terms. Client may select the Wiland products and services it chooses to order. Orders are subject to acceptance by Wiland. These Terms do not provide for participation in the Wiland Cooperative Database or access to Cooperative Database products and services. To order Cooperative Database products and services, Client must enter into a separate agreement providing for Client’s participation in the Cooperative Database. Client may represent one or more End-User Advertisers and order Wiland products and services for those End-User Advertisers. “End-User Advertiser” means a company, charity, political committee or other group for whom Client orders products and services that advertises its own product, service or cause (or a product, service or cause that it distributes) to consumers. End-User Advertiser does not include data aggregators, data brokers or similar companies that provide marketing related services to individuals, companies, political committees or other groups.
2. Pricing and Payment Terms. Pricing for each order is as set forth in the then current Wiland pricing schedule provided to Client or as otherwise specified in the applicable Wiland order form or product data card. Payment is due within 30 days of invoice date. Client will pay any sales, value-added or other similar taxes imposed by applicable law that Wiland must pay based on the products or services provided by Wiland, except for taxes based on Wiland’s income. Prices listed are exclusive of taxes. Wiland may discontinue all processes and/or fulfillment for any account unpaid 60 days from the invoice date. Wiland may charge up to 2% monthly late fees after 60 days unpaid and recover reasonable collection costs on overdue accounts. Products and services are non-cancellable and fees are non-refundable except as otherwise provided in the Wiland pricing schedule or order form.
3. Client Data.
 - (a) Customer Information. Client’s ability to use certain Wiland products and services depends upon Client’s providing certain Client marketing data, or in the case of Client’s representation of End-User Advertiser(s), the applicable End-User Advertiser’s marketing data (in either case, “Client Data”) to Wiland. For example, certain Wiland Custom Audiences are developed based in part on Client’s (or the End User Advertiser’s) customer transaction information or promotion files. Client and Wiland will mutually agree on any Client Data to be provided by Client. Client Data is Client’s (or End-User Advertiser’s) property during and after the term of the order. Wiland may use, access and store Client Data during the term of the order for the sole purpose of providing products and services to Client. Upon the Client’s written request, Wiland will promptly delete Client Data.
 - (b) Data Requirements. Client agrees not to transmit personally identifiable consumer information to Wiland by email and agrees to use Wiland approved methods to exchange this information. Client must not submit the following types of data: (1) financial account numbers or access codes (e.g., bank account or credit card numbers or PINs), (2) government identification numbers (e.g., social security or driver’s license numbers), (3) protected health information as defined by HIPAA or other sensitive individual health information as defined in industry self-regulatory guidelines such as those issued by the Data and Marketing Association, and (4) personally identifying information about children. Client will provide to Wiland only data for which it has full legal authority to collect and provide to Wiland for use as contemplated under its order and these Terms. Client is responsible for the effects of any security vulnerabilities arising from materials provided by Client (e.g., viruses or Trojan horses contained in data provided by Client).
4. Acceptable Use Policy. Client may use Wiland products and services for its own marketing purposes (or those of the End-User Advertiser identified by Client for the applicable order), in accordance with these Terms and the pricing and terms set forth in the Wiland pricing schedule, order form or product data card/product description. No other use by Client is permitted. Client will not provide any data or use Wiland’s products or services in any manner that may (1) violate or infringe the rights of others (e.g., intellectual property rights), (2) involve material that is fraudulent or obscene or (3) otherwise violate applicable law, industry self-regulatory principles or guidelines (e.g., requirements to provide consumers with channel appropriate notice and choice regarding Client’s data collection, use and sharing practices) or applicable privacy policies. Client may not use Wiland products or services to make credit, insurance, employment or other determinations covered by the Fair Credit Reporting Act or similar laws. Client will indemnify and defend Wiland from any claim arising from violation of Client’s or an End-User’s obligations under Section 3(b) or this Section 4. Client is solely responsible for the content of its marketing practices and communications (and, where Client represents End-User Advertisers, those of the End-User Advertisers), including all creative materials, and for legal compliance in connection with use of Wiland products and services. If Client represents End-User Advertisers, Client must ensure End-User Advertisers comply with these Terms, including this Section 4. Client’s offers shall not include any express reference to presumed knowledge about the individual consumer based on Wiland products and services.
5. Access Credentials and Requirements. Wiland may grant Client access to client facing systems (e.g., an Wiland client portal). Client is responsible for identifying and authenticating all employees, contractors or end users (including those of End-User Advertisers) that are authorized by Client, or on Client’s behalf, to access or use any such Wiland system (“Users”), for controlling their access to these systems and related information, and for maintaining the confidentiality of usernames, passwords and account information. Wiland is not responsible for any harm caused by Client’s Users. Client is responsible for all activities that occur under Client’s and its Users’ usernames, passwords or accounts or as a result of Client’s or its Users’ access to Wiland customer facing systems, and agrees to notify Wiland immediately of any unauthorized use. Client will not engage in any activity that would interfere with Wiland’s computer systems (e.g. security scanning or penetration testing).

6. Wiland Products and Services. All Wiland products and services and techniques, processes, web portals, data analysis and statistical models used by Wiland are confidential and proprietary to Wiland. Client will not reverse engineer or reproduce any of the foregoing or attempt to do so. Wiland welcomes client feedback. Any feedback or suggestions submitted by Client or an End-User Advertiser relating to Wiland's current or future products, services or business and related intellectual property rights will be owned by Wiland without additional approval or consideration, and Client assigns to Wiland and will in the future assign to Wiland all such rights.
7. Confidentiality. "Confidential Information" is information that is identified as confidential or would reasonably be considered confidential in the circumstances under which it was disclosed. Wiland and Client will use reasonable efforts not to disclose the other party's Confidential Information to third parties other than as contemplated by these Terms or Client's order with Wiland. Wiland's Confidential Information includes the terms and pricing under these Terms and Client's order with Wiland, and Wiland's data mapping and audience creation/modeling techniques and processes, Wiland's audience deployment methods and partners, the identity of Wiland's vendors and other related data and information. Client's Confidential Information includes Client's (or, where Client represents an End-User Advertiser, End-User Advertiser's) customer information, marketing strategies, goals and results. Wiland may engage trusted third party service providers for certain aspects of the products and services. Wiland is responsible for ensuring compliance by such third parties with these Terms to the same extent that Wiland is responsible for Wiland employees. Wiland employees and service providers are required to abide by confidentiality obligations at least as restrictive as those in these Terms.
8. Limitation of Liability. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THESE TERMS, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES ARISING UNDER THESE TERMS OR THE CLIENT'S ORDER(S) WITH WILAND (EXCLUDING FEES PAYABLE), WHETHER BASED ON CONTRACT, TORT OR OTHERWISE, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. WILAND'S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS OR WILAND PRODUCTS AND SERVICES ORDERED BY THE CLIENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS CLIENT PAID TO WILAND FOR THE ORDER GIVING RISE TO THE LIABILITY, (OR IF NOT ARISING UNDER A SINGLE ORDER, THE MOST RECENT ORDER) LESS ANY REFUNDS OR CREDITS PAID BY WILAND. WHERE CLIENT REPRESENTS ONE OR MORE END-USER ADVERTISERS, WILAND WILL HAVE NO LIABILITY TO END-USER ADVERTISERS RELATING TO PRODUCTS AND SERVICES PROVIDED HEREUNDER. CLIENT WILL INDEMNIFY AND DEFEND WILAND FROM ANY THIRD PARTY CLAIM RELATING TO A CLIENT'S RELATIONSHIP WITH END-USER ADVERTISERS OR THEIR USE OF WILAND PRODUCTS AND SERVICES.
9. Warranty. Wiland will use reasonable efforts to provide Wiland products and services in a professional manner, but Client understands that Wiland does not guarantee that the products or services provided by Wiland will achieve Client's or any End-User Advertiser's goals or any specific marketing results, meet Client's requirements or be error-free. FOR ANY BREACH OF THE WARRANTY, CLIENT'S EXCLUSIVE REMEDY AND WILAND'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT PRODUCT OR SERVICE THAT CAUSED THE BREACH OF WARRANTY, OR, IF WILAND CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALLY REASONABLE MANNER, CLIENT MAY END THE DEFICIENT ORDER. NOTWITHSTANDING THE FOREGOING SENTENCE, ALL DATA (E.G., CONSUMER NAMES, CONTACT INFORMATION, INTEREST SEGMENTS OR DATA SCORES) PROVIDED BY WILAND TO CLIENT IS PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND. TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR MERCHANTABILITY, SATISFACTORY QUALITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
10. Notice. Any notice required under these Terms shall be provided to the other party in writing. Client will send all notices to Legal@wiland.com and by first class mail to Wiland Inc., 7420 East Dry Creek Parkway, Niwot, CO 80503, Attn: General Counsel, Legal Department, with a copy to the same address to Wiland's Chief Financial Officer.
11. Governing Law & Venue. These Terms and all disputes arising out of or relating to the Terms or any order of Wiland's products and services are governed by the laws of the State of Colorado, without regard to any conflicts of law provisions otherwise. The Federal and State Courts of Denver, Colorado, will be the exclusive venue for any disputes arising out of or relating to these Terms or any order of Wiland's products and services.
12. Survival. The provisions of Sections 3 through 14 will survive termination of all outstanding orders.
13. Severability. If any provision of these Terms or of an order of Wiland's products and services is determined to be unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement otherwise remains in full force and effect.
14. Entire Agreement. These Terms and any order form, product data card/product description or web portal, in each case as provided by Wiland for a particular product or service, constitute the entire agreement between the parties with respect to all matters arising from or relating to those Wiland products and services that Client orders, superseding any prior agreements and communications, both written and oral. These Terms may only be modified, or any rights under it waived, by a written document executed by both an executive officer of Wiland and a duly authorized representative of Client. These Terms and any order form, product data card/product description or web portal, in each case as provided by Wiland for a particular product or service, shall supersede the terms in any client, broker or agency purchase order, procurement internet portal, or other similar non-Wiland document and no such terms shall apply. No failure or delay by any party in exercising any right under these Terms, or partial exercise of such right, will operate as a waiver of the right. No waiver of a right in one instance will be considered a waiver in a separate instance.