

TERMS AND CONDITIONS OF ADVERTISING SERVICES

The following terms and conditions (“**T&C**”) provide the terms and conditions for the booking of Advertising Services (as defined below) by the Brand (as specified in the relevant IO) and provision of such services by Zalando Marketing Services GmbH (“**ZMS**”).

1. Definitions and Interpretations

Terms used but not defined herein shall have the respective meanings given to them in the FA (as defined below).

“**Ad**” or “**Ad Placements**” means the display of the Brand Material in the relevant Channel.

“**Advertising Services**” means the Services described herein which are rendered by ZMS according to Section 2.

“**AdRank**” means the Bid*Quality Score, resulting in the ranking of all Bids.

“**Auction**” means the sale held by ZMS at which Ad Placements are sold to the Winning Bid.

“**Bid**” means either (i) the sum calculated by ZMS in accordance with its Standard Procedures and with the Optimization Goal or (ii) the amount of money established by the Brand through the IO.

“**Brand Material**” means any material provided by the Brand to ZMS in order for ZMS to fulfill the relevant IO.

“**Brand Sites**” means the websites to which the Ad Placements – to the extent relevant – might directly or indirectly be linked and that are owned, operated, or controlled by Brand.

“**Brand Tracking Data**” means data, which is collected by ZMS on Brand Sites by using tracking pixels.

“**Budget**” means the total amount of money Brand has budgeted to spend on the Services. The Budget might be split into different specific Services through the IO or not and be considered as a global Budget for all the Services.

“**Campaign**” means the conjunction of Services to be provided by ZMS to Brand during a specific runtime as detailed in the IO.

“**Click**” means the number of instances in which a user clicks on an Ad.

“**CPC**” means cost per click.

“**CPV**” means cost per View.

“**CPE**” means cost per Engagement.

“**Display Advertising**” has the meaning as set forth in Section 7.

“**Engagement**” means an action performed by a user in interaction with the Ad, such as “**add to cart**”, “**add to wishlist**”, or clicking to be redirected to a PDP.

“**FA**” shall mean the framework agreement entered into between ZMS and the Brand.

“**FC**” or “**Frequency Cap**” means the maximum number of times a specific Ad is served to the same user in a given timeframe (e.g. 3/24 means three times within 24 hours).

“**Floor Price**” means the minimum threshold set by ZMS for all Bids to be taken into consideration for the Auction, being the artificial first bid for each Ad Placement.

“**Impression**” means each instance in which an Ad is served on a website. It is sufficient for an Impression if the Brand Material has been loaded and is theoretically visible for the user (even if, for example, user needs to scroll to see it). It is not required that the Brand Material is actually displayed to the user.

“**Newsletter Advertising**” means sending out informational newsletters to interested parties via email.

“**Ordered Service, Marketing Service or Media Booking**” means each individual Service item as specified in an IO.

“**Onsite Ad Placement**” means Ad Placements that are displayed on Zalando SE or ZMS owned websites. Onsite Ad Placements have a duration of a user visit and the specifications established in the IO.

“**Offsite Ad Placement**” means Ad Placements other than Onsite Ad Placements. Offsite Ad Placements have the specifications established by the relevant third parties.

“**Optimization Goal**” means the goals of a Campaign in form of: (i) ROAS (ii) CPV (iii) CPE indicated by Brand in the IO or by default, by ZMS.

“**Print Advertising**” means displaying advertising content in print media.

“**Quality Score**” means the score set by default by ZMS for each Brand.

“**ROAS**” or “**Return On Ad Spend**” means the amount of revenue (before returns) the Brand receives for every euro spent on an Ad Placement.

“**Winning Bid**” is the AdRank with the highest score payable at the AdRank with the second highest score or, by default, at the Floor Price*Quality Score .

“**Social Media Advertising**” means displaying advertising content in social media platforms.

“**Spent Budget**” is the total amount effectively spent per Budget on the Advertising Services.

“**Standard Procedures**” means the standard procedures as established from time to time by ZMS for the calculation of a Bid as well as the optimization of a Campaign and applied by ZMS equally to any such calculation or optimization.

“**View**” means the number of instances in which a user views an Ad displayed on the relevant website. A view shall only be considered as such if the Ad is at least 50% loaded on viewport and onscreen for at least 250 milliseconds.

2. Provision of the Services

ZMS shall serve the Brand Material via the relevant Channel as specified in the IO. To the extent the IO does not provide for specific requirements within the defined Channel (e.g. exact placement on Site, positioning within the newsletter or print Channel), ZMS shall decide in its reasonable discretion on how to serve the Brand Material in the relevant Channel. In any event ZMS shall not be obliged to serve any Brand Material to the extent this would lead to ZMS being in breach of applicable law.

3. Budget shifting and Campaign Extension

- 3.1. ZMS shall be entitled to shift the Budget. This includes but is not limited to the reallocation of the Budget to different countries, Ad types, clothing categories, genders and or targeting. ZMS shall use reasonable efforts to generally limit Budget shifting within Display Advertising and to pursue Brand’s interests when shifting the Budget.
- 3.2. In case of underdelivery of the Campaign, ZMS shall also be entitled to extend the duration of the Campaign as defined in the Insertion Order.

4. Brand material

- 4.1. Brand shall provide the Brand Material necessary for the Advertising Services to ZMS, including all text, graphics, logos, URLs, websites to which Brand Material will link, and any other materials for use in connection with the Brand Material, via email within the timelines as set out in the relevant IO, but in no event later than fifteen (15) Business Days before the Start Date. The Brand Material shall be provided in a common format and be in line with current ZMS Format and creative guidelines, to be found on zms.zalando.com.
- 4.2. Brand shall not include or use any mechanism or functionality in connection with Brand Material that tracks or collects information regarding users of the relevant website or, as the case may be, the newsletter (e.g., cookies, pixels, beacons, or other methods) without (i) ZMS' prior approval and without having entered into a separate agreement with ZMS governing the use of such mechanism or functionality or (ii) the use/inclusion of such mechanism or functionality being permissible as per the relevant IO.
- 4.3. Brand ensures (“*stellt sicher*”) that (i) the Brand Material and ZMS's display of the Brand Material as contemplated herein will not violate the patent, trademark, trade names, service marks, copyright or other intellectual property or proprietary rights (including domain names) or any other rights (including the rights to privacy, confidentiality and publicity) of any third party ; (ii) the Brand Materials and ZMS' display of the Brand Materials as contemplated herein will not be false or misleading, will not constitute an unfair competition practice or unfair commercial practice and there will be a reasonably substantiated basis for any claim made in the Brand Material regarding the advertised products and services; (iii) the Brand Material and Brand Sites, will comply with all applicable laws; (iv) the Brand Material does not contain any material which is libelous, slanderous, fraudulent or defamatory or is unlawful or otherwise objectionable, including without limitation any material that encourages conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any applicable law; (v) the Brand Material will not contain nor transmit any malware, viruses, worms, Trojan horses, adware, spyware, or other harmful code or programs; (vi) the Brand Material will contain all legally required information and (vii) Brand holds all necessary rights to Brand Material in order for ZMS to perform the Advertising Services.
- 4.4. ZMS is not obliged to and will generally not review the Brand Material (including compliance of the Brand Material with the requirements as per Section 4.1 and Section 4.3. Without limitation of the foregoing, ZMS may reject or at any time remove Brand Material or any portion thereof if: (a) it is directed to do so by any law enforcement agency, court, government agency or industry organization; or (b) such Brand Material, or any portion thereof (including the advertised product/service): (i) does not comply with the requirements as per Section 4.3 and Section 4.1; or (ii) violates any applicable law; and/or (iii) does not contain legally required information (e.g. in relation to the advertising of regulated products). Notwithstanding the foregoing Brand remains ultimately responsible for the selection, content, and display of any advertisements, URL link.

- 4.5. In case ZMS rejects the Brand Material Brand may provide new or revised Brand Material, but at the latest (and irrespective of the time of rejection by ZMS) until ten (10) Business Days before the Start Date of the relevant Media Booking. If the Brand fails to provide the Brand Material in full compliance with this Section 3 at the latest until ten (10) Business Days before the Start Date of the relevant Media Booking, ZMS is not obliged to serve the Brand Material as specified in the IO, but will maintain reasonable efforts to do so. The obligation of the Brand to pay the remuneration as per Section 4 in full remains in any case unaffected.
- 4.6. The Brand grants to ZMS a non-exclusive, transferable, fully paid-up, worldwide and unlimited right and license to use (including to copy, modify, translate, make available, assign and sublicense to its affiliates or subcontractors) the Brand Material, solely as is reasonably necessary for ZMS to perform its obligations and exercise its rights relating to the performance of the FA and the relevant IO.
- 4.7. The license to modify includes the right to insert Zalando SE's trademarks in Brand Material.
- 4.8. Brand shall indemnify and hold harmless ZMS against all claims made by third parties due to ZMS's use of the Brand Material in performing its obligations under the FA and any IO and compensate ZMS for all costs (including reasonable attorneys fees) and damages arising in connection with such claim or alleged claim, unless the claim is not due to a culpable act or omission of the Brand. At ZMS' sole discretion, ZMS may opt to conduct the defense against such claim itself and the Brand must use all reasonable efforts to support ZMS in doing so.

5. Reporting

- 5.1. During the term of this FA ZMS shall monitor all parameters required for calculating the remuneration to be paid by the Brand. ZMS shall provide to Brand a monthly reporting on all these parameters, unless set forth otherwise in the IO. This report is the basis for calculation of the remuneration as per Section 6.
- 5.2. Brand may audit the invoices of the preceding twelve months and ZMS's documents pertaining thereto once per year. Such review may only be conducted by a certified public accountant and only upon 4 weeks prior written notice. Precondition for exercising this right is that the certified public accountant undertakes a confidentiality obligation vis à vis ZMS pursuant to which he may only disclose to the Brand (i) whether or not the invoices are correct, and (ii) if they turn out to be incorrect to what extent they are incorrect. The Brand shall bear the costs of the certified public accountant, unless the audit proves that ZMS's invoices within the twelve months preceding the audit deviate more than 10% from the correct amounts. Each Party may have the findings of the auditor reviewed by the competent court.

6. Termination

- 6.1. Notwithstanding Section 7 in the FA, it is agreed that ZMS may terminate any Media Booking with immediate effect in case the Brand fails to provide the Brand Material in full and in full compliance with the requirements set forth in these T&C until ten (10) Business Days before the relevant Start Date.
- 6.2. In case ZMS rightfully terminates the Booking (or the pertaining IO) for cause, Brand shall pay to ZMS liquidated damages in an amount equal to the remuneration agreed for the relevant Booking in the respective IO (cf. column Net budget). In case of Display Advertising the preceding sentence shall only apply, if the Parties have designated a relevant website for the relevant Media Booking, which is operated by ZMS or an Affiliated Entity.

7. Display Advertising

- 7.1. Display Advertising comprises Onsite and Offsite Ad Placements and include any kind of graphical advertising on websites, including mobile enabled websites, mobile apps and desktop websites. An IO can, amongst others, detail the following kinds of Display Advertising: (i) banner and teaser, (ii) sponsored product advertisements, (iii) feed advertisements, (iv) video advertisements, (v) graphical advertisements on social media platforms and (vi) any other graphical advertisement the Parties agree on in an IO.
- 7.2. Onsite Ad Placements are sold by ZMS by Auction. An Auction takes place whenever a placement in a specific Channel is free. When placing an order through the relevant IO, Brand shall indicate either: (i) the Optimization Goal (either for each placement or for the total Campaign), in which case ZMS will calculate the Bid based on Brand's indicated Optimization Goal or (ii) the Bid for each Ad Placement. The Bid might be changed by Brand in the course of an Auction.
- 7.3. The Bid might be optimized by ZMS in case of underperformance of the Campaign.
- 7.4. The winner of the Auction is the one with the Winning Bid, such Auction being payable to a price equal to:
 - (i) the AdRank number of the bidder with AdRank 2; or
 - (ii) , by default, to the Floor Price,

both divided by the Quality Score of the winner of the Auction (AdRank2/Quality Score or Floor Price/Quality Score) (the "**Price**"). The Price will always range between the Floor Price and the Bid.

- 7.5.** If Brand wins the Auction, the Price will be applied to the Budget either on a CPV basis, or on a CPC basis, as defined in each case in the relevant IO. This means that the Price will only be applied to the Budget in case that there is a View or an Engagement by a user.
- 7.6.** For Offsite Ad Placements ZMS will charge Brand a management fee as stated in the IO.
- 7.7.** In case the Parties agree on Display Advertising, ZMS shall use commercially reasonable efforts serving the relevant Brand Material to users of the websites designated in the IO for the relevant Media Booking, who conform (according to the information in ZMS's data and at ZMS's sole discretion) to the audience description as specified in the IO and thereby reaching the Optimization Goal with the Budget as set forth in the IO. For the avoidance of doubt, it is hereby explicitly stated that ZMS shall only be obliged to maintain commercially reasonable efforts to reach the Optimization Goal with the agreed Budget specified in the IO, but not to actually reach the Optimization Goal with the agreed Budget, since ZMS has no influence on whether or not a sufficient number of users conforming to the audience description in the IO actually visits the relevant website between the Start Date and the End Date.
- 7.8.** The Brand shall ensure (*stellt sicher*) that no technology or functionality is used or implemented on Brand relevant website that disables the "Back" button on users' browsers as to prevent them from being able to return to the prior website they visited. Additionally, the Brand shall ensure (*sicherstellen*) that any link contained in the Brand Material will work properly and that the link does lead to an existing site.

8. Newsletter Advertising

In case the Parties agree on Newsletter Advertising ZMS shall use commercially reasonable efforts to serve the Brand Material via Zalando SE's Newsletters to the number of recipients of the newsletter specified in the IO, who conform (according to the information in ZMS's databases and at ZMS' sole discretion) to the audience description as specified in the IO.

9. Paid Social Advertising

In case the Parties agree on Paid Social Advertising, ZMS shall –as agreed in the IO - either (i) serve the Brand Material via the social media Channels specified in the IO, or (ii) create content based on the Brand Material and serve the content created via the social media Channels specified in the IO. In case (ii) the Brand shall deliver to ZMS – in addition to the Brand Material – any further material and provide any assistance reasonably necessary for creating the social media content. To the extent Social Media Advertising shall be conducted as targeted advertising ZMS shall use commercially reasonable efforts to serve the Brand Material or – as the case may be – the content created by ZMS via the social media channels specified in the IO to users, who conform (according to the information in ZMS's databases and at ZMS' sole discretion) to the audience description as specified in the IO.

10. Print Advertising

In case the Parties agree on Print Advertising ZMS shall serve the Brand Material via the printed matter specified in the IO and in the number of copies of the printed matters specified in the IO.

11. Other types of advertising

The Parties may agree on other types of advertising which are not specified within the Sections above. The Parties will specify these Services in the IO.

12. Miscellaneous

- 12.1.** ZMS may, at its own discretion, choose to alter or amend the terms of these T&Cs (individually and collectively, the "**Modification**"). Such Modification become legally binding if
 - (a) ZMS notifies Brand by email of the Modification and
 - (b) Brand does not object to the Modification within two weeks after the notification.
- 12.2.** The Modification becomes effective at the end of this objection period, if Brand has not objected. However, such Modification shall not affect any IO that has been fully processed at and/or the start date of which is prior to the effective date of the Modification.