

## **General Terms and Conditions of AZ Direct GmbH for Addresses, Data and Multi-Channel Services**

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### **A) Introduction part**

#### **I. Scope of application**

1. AZ Direct GmbH (hereinafter "AZ") provides the services listed under A) II "Scope of services" exclusively in accordance with the following General Terms and Conditions ("GTC"), which the Customer acknowledges by placing the order or by accepting a service.
2. They shall also apply to all future transactions with the Customer in the version valid at the time the order is placed.
3. The validity of deviating and supplementary terms and conditions of the Customer is excluded, even if AZ does not expressly object to them.
4. The following GTC of AZ apply exclusively to companies, charitable organizations, legal entities under public law and special funds under public law.
5. If AZ provides services in the area of List Broking, the General Terms and Conditions of AZ for list broking with advertisers shall apply. Insofar as AZ provides services in the area of production and processing of advertising materials, AZ's General Terms and Conditions of Business for the production and processing of advertising materials apply.

#### **II. Scope of services**

1. AZ offers a wide range of services for providing addresses and data and for carrying out all forms of direct marketing. The services inter alia include address delivery, e-mail marketing, display advertising, data delivery, data processing in the area of address collection, address matching, address validation, address updating and address confirmation, data mining, lead generation, consulting and project management services, search engine marketing, social media marketing, creation and operation of websites, mobile marketing and video marketing.
2. The special provisions for the provision of the various services are described in more detail in Part B) of the GTC, and the general provisions, which apply equally to the provision of all services, in Part C) of the GTC. The services described in Part B) are offered by AZ not only individually but also in combination with one another.

## **B) Special provisions**

### **I. Address Delivery**

1. AZ offers services in the area of address delivery. Depending on the product ordered, this involves the delivery of the postal addresses generated by AZ within the scope of license agreements (e.g. AZ DIAS addresses). Insofar as these GTC refer to an address, this includes both private addresses and company addresses. A private address consists of the following address components: First name, surname, title, salutation, postcode, town, street, house number. A company address consists of the following address components: Company name, postcode, town, street, house number; with contact person: first name, surname, title, function.

2. Unless otherwise regulated in the offer or in these GTC, AZ retains ownership, copyright or related property rights and/or rights of use to the addresses generated by AZ and made available to the Customer.

3. In principle, the addresses supplied by AZ may only be used once by the Customer for written advertising measures. The Customer is responsible for the legal admissibility of its use of the addresses. The Customer is not authorized to store the delivered addresses in any form beyond a short-term storage to check the campaign success of a maximum of 12 weeks after postal delivery or to store them in any other form, unless otherwise agreed in individual contracts. After the agreed use, the Customer must destroy or delete the addresses completely without delay; upon request, Customer must confirm this to AZ in writing without delay. The Customer is not authorised to give or sell the addresses provided by AZ to third parties in whole or in part, in the original or in copies, or to use them for further advertising mailings.

4. If the Customer receives orders or enquiries on the basis of the use of the addresses, he is authorised, to the extent legally permissible, to permanently insert the addresses of these persons into his own address databases.

5. AZ is entitled to check compliance with the above usage restrictions respectively specifications in accordance with B) I.2. to 4. by using control addresses.

6. AZ shall update its addresses at the regular intervals customary in the industry.

7. In addition to B) I.6., AZ accepts no liability for the currentness of its addresses.

8. The addresses maintained by AZ and made available to the Customer are subject to constant change processes (e.g. relocation of address holders). Consequently, despite regular updates by AZ, the addresses supplied to the Customer cannot always be completely correct and error-free. An error rate of a maximum of 4% of the addresses delivered and, in accordance with the industry standard for household addresses of up to 8% of the addresses delivered, cannot be excluded. Up to these limits, there shall be no defect of the addresses within the meaning of the provision under C) VI. "Rights of the Customer in the event of defects, obligation to inspect".

9. As AZ's address lists are subject to constant changes for the reasons stated under B) I.8. above, AZ endeavours to adjust its address lists to these changes in a timely manner. Accordingly, there may be

positive or negative quantity differences in the addresses between the number of addresses used in the order confirmation and the quantity of addresses made available during the actual execution of the order. AZ is entitled to exceed or fall short of the number of addresses specified in the order by 10% without consultation with the Customer. Up to this limit there is no defect of the addresses in the sense of the regulation under C) VII. "Rights of the Customer in case of defects, duty of examination". Positive or negative quantity variances are taken into account in remuneration, unless this is incompatible with the nature of the individual contract (comparison across several address lists, etc.).

10. If the addresses supplied by AZ are used by the Customer in violation of these GTC, in particular the provisions under B) I.2. to 4., the Customer is obliged to pay AZ a contractual penalty amounting to ten times the amount of the fee for the order from which the addresses used originate.

11. Proof of an infringement within the meaning of B) I.10. is provided by AZ submitting the control addresses as well as the e-mails respectively other documents with regard to the use of the control addresses in violation of the contract, after the use in violation of the agreement respectively the repeated use of the control addresses attached in accordance with B) I.5. has been established. AZ reserves the right to assert further claims for damages.

## **II. E-mail Marketing**

1. AZ offers services in the field of e-mail marketing. These services include the selection of e-mail lists, the selection of target groups within the market database AZ DIAS, the creation and processing of templates, the technical e-mail dispatch and the performance reporting that concludes a campaign.

2. AZ is entitled to have the services in the area of e-mail marketing provided by third parties.

3. AZ is entitled to make partial deliveries, insofar as:

- the partial services can be used by the Customer within the scope of the contractual purpose,
- the provision of the remaining services is ensured, and
- the Customer does not incur any unreasonable additional expenditure or costs as a result.

4. AZ undertakes vis-à-vis the Customer with regard to all services in the field of e-mail marketing that all e-mails with advertising content will only be sent in compliance with the relevant data protection regulations (in particular DSGVO, TMG, BDSG) and competition regulations (in particular UWG). AZ fulfils the following requirements in particular:

1) Advertising e-mails are only sent to recipients whose legally effective express consent to the receipt of advertising e-mails (so-called "Double-Opt-In", hereinafter "DOI") exists, or with regard to which the legal requirements of Section 7 (3) UWG apply.

2) AZ complies with the relevant regulations for the collection, storage and processing of personal data.

5. Upon request of the Customer, AZ or a partner commissioned by AZ can provide documented proof at any time within 4 working days that the above requirements under B) II.4. 1) to 2) have been fully

complied with. This includes in particular the information when and how a requested e-mail address was generated.

6. The Customer undertakes to provide AZ with the content, other data, information and templates (hereinafter referred to as "advance input") required for the provision of services in accordance with B) II. 1. to 5. in a timely and complete manner, but no later than five (5) working days (in special cases to be agreed ten (10) days) prior to the agreed commencement of the mailing. The preliminary work includes, among other things:

- a) A HTML that can be sent according to the technical specifications of AZ,
- b) If advertising material is created by AZ (special case): PSD file or images and texts as well as link list with exact description of the respective placement,
- c) Subject line and sender,
- d) Complete negative lists (e.g. blacklists) which must be excluded before dispatch.

7. Insofar as the Customer delivers advance input to AZ for use in the preparation or execution of the ordered performance, the Customer assures that it is entitled to use and release this advance input and grants AZ the necessary rights to use the advance input in accordance with the provisions of these GTC.

8. The Customer is basically responsible for the admissibility, correctness, completeness and quality of the content of the mailings. It must ensure that no rights of third parties are infringed by the contents specified by him as well as the design of the mailings and the websites linked therein and that the mailings do not violate applicable legal provisions and official orders. AZ draws the Customer's attention in particular to the provisions of the Law against Unfair Competition (UWG), the Pricing Ordinance (PAngV), the General Data Protection Regulation (GDPR), the Telemedia Act (TMG), the Federal Data Protection Act (BDSG), the Energy Consumption Labelling Act (EnVKG) and the Energy Consumption Labelling Ordinance (EnVKV).

9. If the Customer does not fulfil its obligations to cooperate in accordance with B) II.6. to 8. or if it has not made outstanding down payments or other payments from contracts with AZ which are subject to these GTC, or if there are indications that the contents specified by the Customer or linked websites within the meaning of B) II.8. are inadmissible in terms of content, AZ is entitled to suspend the provision of services until this condition has been remedied.

10. AZ shall immediately notify the Customer of the suspension of performance in accordance with B) II.9. stating the reasons. The Customer shall immediately take all necessary steps to eliminate the reasons for the suspension.

11. If the Customer does not invalidate or remove the suspicion or circumstance that the mailing contents provided by the Customer or the target pages linked to it violate B) II.8. within two (2) weeks, AZ may refuse performance of the service for one and all and terminate the relevant order and all other contractual agreements with the Customer with immediate effect for extraordinary reasons.

12. AZ will provide the Customer with a test account (www.web.de or www.gmx.de) at least two (2) working days before the agreed start of the campaign. The Customer is obliged to examine the test

mail immediately after its receipt with the care of a prudent businessman and to address any errors within the agreed period or, otherwise, to release it in good time before the agreed beginning of the mailing. By releasing the test mail, the Customer also declares that it agrees with the content and that the desired technical functionalities (e.g. optically correct presentation of the advertising material, correct link routing, tracking functions such as opening rates, click rates, unique openings, unique click rates, click-through rates, etc.) and all other characteristics specified by it are included.

13. In the event of a complaint, AZ will send a second corrected test mail to the Customer.

14. The Customer must release the test mail by 6 p.m. on the last working day before dispatch at the latest. Otherwise AZ cannot guarantee smooth dispatch.

15. AZ shall not be liable for delays in the commencement of the mailing due to delayed cooperation of the Customer.

16. Cancellations of agreed orders by the Customer require a corresponding e-mail from the Customer to AZ.

17. A cancellation by the Customer may be declared free of charge up to ten (10) working days before the agreed dispatch date.

18. In the event of a cancellation by the Customer between the 9th and 3rd working day before the agreed dispatch date, a cancellation fee of 50% of the order value will be charged.

19. In the event of a cancellation by the Customer during the last two (2) working days before the agreed delivery date, a cancellation fee of 100% of the order value will be charged.

20. The time of receipt of the cancellation e-mail by AZ is decisive for compliance with the aforementioned deadlines.

### **III. Display Advertising**

1. In the area of display advertising, AZ offers the Customer to mediate the media reach of owners or marketers of media reach in order to send advertising media of the Customer to this media reach, in particular in the form of banners, rectangles, skyscrapers, layers, pop-ups, video ads, text ads, text/image hybrid ads, content integrations, etc.

2. AZ undertakes, in accordance with these GTC, to ensure that the advertising material intended for publication and made available by the Customer in the respective individual order is delivered to the contractually agreed extent, for the contractually agreed duration and for the contractually agreed advertising space. If only one online network (which includes various websites, applications, services, etc.) is agreed for delivery, the Customer may not claim that his advertising media are delivered on certain websites, applications, services, etc.

3. AZ is entitled to have the advertising material processed with regard to format, size and technical properties, provided this is necessary for the delivery of the advertising material from AZ's point of view and acceptable to the Customer, taking into account AZ's interests. AZ does not owe any exclusion of competition, not even with regard to websites on which the advertising media are placed. If AZ

considers it necessary to edit the content of the advertising material (e.g. on suspicion of unlawfulness of the content), AZ will obtain the consent of the Customer. Delays in the provision of services by AZ resulting therefrom are the responsibility of the Customer. However, AZ is not obliged to check the content of the advertising material for legality.

4. Online advertising shall only be delivered by AZ for the period agreed in the individual order and/or until the maximum number of ad impressions (Internet users' visual contacts to online advertising), page impressions (page views of the Internet pages on which the online advertising is placed) or ad clicks (users' clicks on the online advertising) specified therein has been reached.

5. If AZ has guaranteed the Customer the delivery of a certain number of ad impressions, page impressions, ad clicks or conversions for online advertising within a certain period and the guaranteed number was not delivered in full within this period, AZ shall be entitled to continue the relevant online advertising and to have the missing number of ad impressions, page impressions or ad clicks delivered subsequently. The parties will jointly agree on the corresponding additional delivery deadlines taking their interests into account.

6. If the parties do not agree on additional delivery periods, a grace period of four weeks shall apply as an alternative.

7. If AZ does not have the agreed number of copies delivered within the subsequent delivery periods either, the Customer shall be entitled to proportionately reduce the remuneration for the undelivered ad impressions, page impressions, ad clicks or conversions.

8. Notwithstanding any deviating agreement contained in the respective individual order, the Customer shall not be entitled to delivery of the advertising material on specific placements. If AZ changes or discontinues media formats or their positioning or introduces new advertising formats or positions, AZ is entitled to exchange these advertising formats or positions for other media formats or positioning with the same total volume.

9. If the advertising material intended for publication and provided by the Customer is not obviously recognizable as advertising, AZ is entitled to label the material as advertising, in particular to have it marked with the word "advertisement" or similar additions and/or to have it moved from any additional editorial content in order to clarify the advertising character.

10. AZ is not obliged to return or store the advertising material supplied by the Customer for the execution of the online advertising to the Customer after the end of the campaign.

11. AZ is not obliged to create graphics or advertising texts for the Customer. Insofar as AZ provides such services on the basis of individual agreements in an individual order, these services are to be remunerated separately by the Customer on the basis of the hourly rates agreed in the individual order or, if such agreements do not exist, on the basis of the currently valid hourly rates of AZ.

12. AZ is entitled to postpone or cancel an agreed date for publication of an online advertisement if, contrary to expectations, a service of the agreed advertising space in which publication is to take place is not offered on the agreed date or technical circumstances for which AZ is not responsible prevent publication by the agreed date.

13. Should it be possible to postpone the date to a later date, AZ will take the interests of the Customer known to AZ into account. As far as possible, AZ will place the online advertising in coordination with the Customer at a later date.

14. If online advertising cannot be placed for the above reasons, the agreed remuneration shall not apply or shall be reimbursed to the Customer by AZ. AZ is not liable to the Customer for such a shortfall or delayed performance.

15. The Customer is obliged to check the online advertising immediately after publication and to notify AZ in writing and by e-mail of any identifiable errors immediately, but at the latest within five working days after publication. If the Customer fails to notify AZ, the online advertising shall be deemed to comply with the contract, unless the error could not be detected during such a check. If an error is subsequently discovered in the online advertising, the Customer must notify AZ of the error immediately after its discovery in writing and by e-mail, otherwise the online advertising shall be deemed to comply with the contract, even in view of these errors.

#### **IV. Data Supply**

1. AZ offers services in the area of address enhancement and data delivery. "Data" in the sense of these GTC are: so-called hard information on an address (e.g. telephone number, year of birth for a private address and e.g. telephone number, year of foundation, industry for a company address); statistical information (e.g. derivation of an age from a first name analysis and explicitly for a company address e.g. sales class, employee class) on an address; hard information on the location (e.g. federal territory, federal state, street) and statistical information (e.g. number of households in a street) regarding the location.

2. AZ supplies data in the following areas of use:

- (i) Address enrichment with data: AZ enriches addresses provided by the Customer with AZ data (self-searched and/or licensed data) and makes these available to the Customer again.
- (ii) Data delivery: AZ delivers a data file generated by AZ (self-searched and/or licensed data) to the Customer for its use, as described in detail in the offer / these GTC.

3. Unless otherwise provided in the offer or in these GTC, AZ retains ownership, copyright or related property rights and/or rights of use to the data supplied and made available to the Customer by AZ.

4. The Customer may only use the data supplied and made available by AZ for the purposes stipulated in the contract. The Customer is responsible for the legal admissibility of its use of the data. After the agreed use, the Customer must immediately destroy or delete the data completely. Upon request, the Customer must immediately confirm this in writing to AZ. The Customer is not authorized to transfer or sell the data provided or data derived therefrom to third parties in whole or in part, in the original or in copies.

5. AZ is entitled to check compliance with the above restrictions of use or specifications in accordance with B) IV.2. to 4. by using control data.

6. AZ updates its data at the regular intervals customary in the industry.
7. In addition to B) IV.6., AZ accepts no liability for the currentness of its addresses.
8. AZ compiles the data on offer on the basis of statistical evaluations of data substances and on the basis of information provided by third parties. AZ processes the data substances to the best of its knowledge and belief. Since statistical evaluations always imply an error rate, AZ can only provide and adhere to error-free delivery within the scope of what is customary in the industry. The same also applies to information provided by third parties.
9. As the data stocks held by AZ are subject to constant change, there may be positive or negative deviations within the scope of the offer to supply a data file between the number of data volume to be supplied on which the order confirmation is based and the data volume made available during the actual execution of the order within the scope of data file delivery. Exceeding or falling below a maximum of 10% does not constitute a defect in the data file supplied within the meaning of Section C) VI. "Customer's rights in the event of defects, obligation to inspect". Overruns or underruns are only taken into account in the remuneration if they represent a deviation of more than 5% from the amount of data listed in the offer.
10. In contrast to the delivery of a data file, AZ does not promise the delivery of a certain amount of data as part of address enhancement. The addresses supplied by the customer are processed and, as far as possible, enriched with data.
11. If the addresses supplied by AZ are used by the Customer in violation of these GTC, in particular the provisions under B) IV.3. to 9., the Customer is obliged to pay AZ a contractual penalty amounting to ten times the amount of the remuneration for the order from which the data used originates.
12. The submission of the documents for the use of a control date is sufficient proof that the data was used in breach of contract by the customer. AZ reserves the right to assert further claims for damages.
13. AZ points out to the Customer that unsolicited telephone advertising campaigns are not permitted in relation to consumers. The provision of telephone numbers by AZ does not replace the consent of the respective consumer. In this respect, the Customer bears the risk of a warning letter and further legal consequences and indemnifies AZ internally from all claims of third parties.

## **V. Data Processing**

1. AZ processes addresses and data in the course of data processing for the Customer with the aim of digitisation, standardisation, correction, updating, comparison, elimination, qualification, selection and creation of files. Data processing by AZ is carried out exclusively in accordance with the relevant statutory provisions, in particular those of the General Data Protection Regulation (GDPR), the Federal Data Protection Act (BDSG) and for the contractually agreed purposes.
2. AZ examines the addresses/data provided by the Customer with the aid of suitable software and using reference databases (self-researched and/or licensed data) for up-to-dateness and errors and corrects them as necessary ("investigation results").



3. The Customer shall make the addresses/data to be processed available to AZ on the agreed date in the agreed electronic form. Before handing over the addresses/data to AZ, the Customer is obliged to make a backup copy of the addresses/data which remains with it or a third party commissioned by it.
4. AZ shall make the test results available to the Customer within the framework of protocols. Insofar as Customer addresses/data are processed, AZ shall hand them over to the Customer to the degree this has been agreed in the order.
5. The Customer shall use the results of the investigation exclusively in its own business operations and shall not make them available to third parties. Irrespective of this, the Customer is entitled to permanently insert the examination results into his own address databases.
6. The reference data used by AZ in the context of data processing are subject to constant change processes (e.g. due to relocation of address holders). Consequently, the test results delivered to the Customer cannot always be 100% correct and error-free.
7. With regard to the above provision, errors in up to a maximum of 4% of the investigation results delivered do not constitute a defect within the meaning of C) VI. "Customer's rights in the event of defects, duty of investigation".
8. The digitization of addresses on application forms, coupons, etc., - provided by the Customer – which are usually entered by hand, is carried out by scanning with subsequent manual recording and integration of extensive reference data. Despite a high degree of automation, data entry errors cannot be ruled out due to poor legibility of the original documents. Such errors do not constitute a defect within the meaning of C) VI. "Customer's rights in the event of defects, duty to examine", as they arise from the Customer's risk sphere.

## **VI. Data Mining / Data Analysis**

1. AZ offers services in the field of data analysis. The term data analysis in these GTC refers to the analysis of data provided by the Customer by AZ using statistical and mathematical methods.
2. AZ is entitled, at its discretion, to have the order executed in whole or in part by qualified third parties.
3. For the results of the data analysis, the following applies in principle: AZ prepares an analysis report (statistical report covering all data) and possibly a so-called score card (statistical function for the individual evaluation of addresses and data). AZ hands over the analysis report to the Customer that may only use it for his own purposes, but may not pass it on to third parties. The score card and all rights of use thereto remain with AZ.
4. The data used by AZ for data analysis are prepared on the basis of statistical evaluations and information provided by third parties. AZ processes and maintains this data to the best of its knowledge and belief.
5. Since an error rate is always immanent to statistical evaluations, an up-to-dateness and correctness of the analysis results can only be guaranteed within the scope of what is customary in the industry.

6. Within the scope of data analysis, AZ applies statistical-mathematical methods and findings customary in the industry as well as findings gained from its own experience. AZ has no further obligation with regard to the completeness and accuracy of the analysis results.

## **VII Lead Generation**

1. AZ offers services in the area of data generation (addresses, leads, buyer interests, etc.). The data is generated in particular by advertising actions such as newsletters, competitions, puzzles, personality tests, surveys, etc., which are sponsored by the Customer and conceived, designed and carried out by AZ. Alternatively, AZ generates data by means of advertising campaigns that are carried out with partners. In these cases, the competitions will be conceived, designed and carried out by the respective AZ partner. The conception of the advertising campaigns by the Customer itself also is an option.

2. AZ confirms orders of the Customer by means of a written order confirmation. In the order confirmation, AZ specifies in a binding way the following contractual data in particular: type, content, period and target group of the advertising campaign (e.g. the competition), sponsoring contribution, co-registration and/or other contributions/provision by the Customer, amount of remuneration for the data records generated and transmitted by AZ, due date of remuneration.

3. AZ ensures that the relevant provisions of data protection and competition law are observed when generating the data.

## **VIII. Consulting and Project Management Services**

1. AZ provides consulting and project management services for the evaluation, planning and implementation of digital marketing campaigns in particular. This does not include the production of advertising materials.

2. AZ provides its consulting and project management services with the necessary care and in accordance with the usual practices of the advertising industry, but does not guarantee that the advertising campaigns carried out by the Customer on the basis of its services in this regard will result in a certain economic success, in particular increases in sales or earnings.

3. Unless otherwise agreed, AZ will transmit its performance results to the Customer in writing or with the aid of electronic means (e.g. e-mail, download link, etc.). If documentation of the advisory process or other documents are requested by the Customer, AZ will make it available in suitable written form ("written documentation"). In this case, only the content of the written documentation is binding; on the other hand, oral or telephone statements and information by AZ employees are not binding, unless they are confirmed by AZ in writing.

4. Submissions and drafts provided by AZ are only binding in terms of colour, image, sound or material quality once their realizability has been confirmed by AZ in writing or by e-mail.

## **IX. Search Engine Marketing and Social Media Marketing**

1. AZ offers services in the area of search engine marketing (search engine optimization (SEO) and search engine advertising (SEA)), in the optimized use of Google Adwords and Google Grants, as well as in social media marketing with the aim of improving the placement of the Customer's internet presence in the most important internet search services to be coordinated between the parties and thus directing qualified visitors to the Customer's website during the contract period.

2. AZ does not guarantee the Customer admission to or specific placement of the website with the respective search service. In this respect, AZ does not owe any particular success.

3 AZ is entitled to have these services provided by third parties. Insofar as the third party is in direct contact with the Customer, all rights and obligations arising from these GTC apply vis-à-vis the third party who is AZ's vicarious agent in this respect.

4. In the area of search engine marketing, AZ develops a concept for optimizing the Customer's websites (onpage optimization) and improving the networking of the Customer's websites (offpage optimization) based on the Customer's goals and the current situation. AZ then supports the Customer in implementing the optimisation measures. For this purpose, AZ is also entitled to edit the source code of the Customer's website(s) and/or to change their design by placing links and/or image and/or sound material and/or to make bookings of the keywords on Google in the name or for the account of the Customer or to manage any customer account of the Customer on Google in his name and account. The advertising material is delivered by the search engines.

5. The Customer grants AZ the necessary powers for the purposes of B) IX. The Customer may not make any changes to the accounts managed by AZ, even if it has access to them. If the Customer violates these obligations, all liability of AZ in connection with the services of AZ in accordance with B) IX. shall end. In such cases, the Customer is also obliged to indemnify AZ upon first request against all resulting third-party claims, including the reasonable costs of legal defense.

6. AZ does not guarantee to the Customer that the services of third parties, in particular networks or server services, are always uninterrupted and error-free or are sufficiently available. The same applies to Google Adwords and Google Grants.

7. The Customer is obliged to inform AZ immediately of any defects that may occur, stating the information required for clarification. Defects are exclusively reproducible errors and/or malfunctions caused by defective performance by AZ. This does not include functional impairments resulting from hardware defects, environmental conditions, operating errors, unreliable or defective data such as computer viruses and the like that do not fall within AZ's area of responsibility.

8. When booking campaigns on social networks or Google Adwords, the parties agree on a media budget. This media budget is a guideline and can be under- or overshot by up to 10% in individual cases. Volumes offered with the media service such as ad impressions and clicks are based on empirical values and may not be provided by the marketer/publisher within the intended publication period. In this case, AZ is entitled to extend the placement period by an appropriate period until the booked volumes have been fulfilled and to switch to comparable placements if the originally booked placement is no longer available at the end of the originally booked placement period.

9. AZ is not liable for the content registered with search services and/or Google AdWords for the Customer and/or the Customer's website(s), in particular if these violate applicable law and/or third-party rights. It is clarified that the Customer alone is responsible for ensuring that the keywords and contents of its website(s) do not violate any applicable law or the rights of third parties. If a third party asserts claims against AZ with regard to the content and/or website(s) of the Customer, the Customer shall indemnify AZ upon first request against all claims in this regard, including the reasonable costs of legal defense.

#### **X. Creation and Operation of Websites**

1. AZ offers services in the area of setting up and operating websites. These services include workshops, consulting services, development of exemplary screen designs, templates, implementation, programming, creative services, placement of advertisements and maintenance services.

2. AZ is entitled to have these services provided by third parties. Insofar as the third party is in direct contact with the Customer, all rights and obligations arising from these GTC apply vis-à-vis the third party who is AZ's vicarious agent in this respect.

3. If the services to be provided by AZ require more detailed definitions or service descriptions, they shall be specified in binding form at the appropriate time in written briefings, minutes or contact reports of the parties. This also specifies the time frame for the services. After 5 working days, these documents become a binding basis for further project processing, unless they are objected to within 5 working days of receipt.

4. If AZ cooperates with other contractors of the Customer ("third-party service providers"), these are considered to AZ as vicarious agents of the Customer and their knowledge as knowledge of the Customer and vice versa. Declarations of intent by the third-party service provider to AZ only become effective when the Customer authorizes them in writing and/or by e-mail. In this case, the Customer as Customer of both AZ and the third-party service provider is responsible for the stringent and manageable delimitation, coordination and monitoring of the areas of activity and responsibility of the various contractors. The Customer checks the conformity of AZ's services with the information owed under the contract as well as the completeness and appropriateness of such information without delay, even if these were to be handed over directly by AZ to the third-party service provider.

5. The services shall be developed, installed and set up by AZ in accordance with the state of the art at the time the contract is concluded. The state of the art does not mean that every single component corresponds to the current state of the art. Rather, it is sufficient if the composition of the components covered by the contract has proven to be reliable in use and alone provides a guarantee for the Customer's vital, trouble-free business operations. Deviations which only insignificantly reduce use are not defects. This also applies to any deviations that can be attributed to changes by the Customer, his employees or other third parties, or that are not attributable to the sphere of AZ.

6. The use of different web browsers and e-mail software is common for retrieving content and sending electronic messages on the Internet. For this purpose, also very different hardware is used, on which the most different operating systems run. Therefore, the appearance of the website may, in individual

cases, in particular with regard to colour rendering and due to the differentiating size formats of the screens and graphic systems used by Internet users, deviate from the usual appearance that the parties have specified. Singular deviations of this kind do not constitute defects.

7. AZ does not guarantee that all communication lines from and to the server on which the website is set up are available without interruption and without errors. In the event of considerable disruptions of longer duration, the Customer has the right to reduce the usage fee in accordance with the disruption if it has notified AZ of the disruption, has set a reasonable rectification period and this period has elapsed fruitlessly.

#### 8. Rights of Use:

8.1 Upon full payment of the corresponding service invoice, AZ grants the Customer simple and non-exclusive, non-transferable and non-sublicensable rights of use and exploitation of the work results to the extent necessary for the execution of the contractual project. The copyrights to the work results including the modification rights always remain with AZ.

8.2 In deviation from the above provision, in case of a respective agreement, AZ grants the Customer sole and exclusive rights of use and exploitation of word and/or figurative marks, logos, signs and slogans developed by AZ, irrespective of their registrability under the Trademark Act, against payment to be agreed separately.

8.3 AZ also grants the Customer exclusive and exclusive rights of use and exploitation of source codes of programs, program parts or programmed contents, regardless of the programming language developed by AZ for the Customer, against full payment of the agreed remuneration. This does not include the so-called open working data of AZ (e.g. working files from graphics programs with the file extensions.psd,.indd,.ai, etc).

8.4 Any use tolerated before full payment of the agreed remuneration of AZ can be revoked at AZ's discretion, in particular in the event of default in payment.

8.5 AZ shall grant the Customer rights of use and exploitation of released and paid work results of third parties, e.g. photos, music, to the extent specifically agreed by the parties, alternatively as is necessary for the performance of the assigned task. Should these rights of use and exploitation be limited in individual cases in terms of time, space and/or scope and should it therefore not be possible to grant rights to the aforementioned extent, AZ will point this out to the Customer and proceed in accordance with his instructions. Any additional costs arising from this shall be borne by the Customer.

8.6 Rights of use and exploitation for services (ideas, drafts, etc.) rejected, cancelled or not used within 6 months after delivery remain completely with AZ or fall back to AZ.

8.7 AZ shall inform the Customer about any restrictions known to it on the rights of use and exploitation of the work results and is only liable to the Customer if it knew or should have known the restrictions. The Customer protects AZ's work results and services from unauthorized access and/or unauthorized use by third parties and informs AZ immediately of any incidents.

#### 9. Third Party Rights:

9.1 The Customer declares that all content made available to AZ for the performance of this contract, such as texts, images, graphics, music and video sequences, software, drawings, etc., database content and database structures as well as the domain used do not violate applicable law and are free of third party rights or that the Customer is entitled to use such content, in particular to make it publicly available, to the degree necessary to carry out the agreement.

9.2 The inclusion of the aforementioned content in the contractual websites is exclusively at the Customer's own risk. The Customer indemnifies AZ against all claims by third parties against AZ in connection with the performance of this contract from the point of view of the violation of applicable law or the rights of third parties by content of the Customer, including the reasonable costs of legal defense.

9.3 In return, AZ declares that the services and source codes created by AZ, such as HTML documents, Java scripts, Active-X, functions or other elements also comply with applicable law and are free of third-party rights or that AZ has acquired the necessary rights of use. AZ further declares that AZ is in possession of the programming tools required for the execution of the contract and is entitled to grant the Customer the agreed usage and exploitation rights to the websites created.

9.4 In the event that the violation of applicable law or third party rights is asserted against the Customer or against AZ in relation to the created websites by third parties, the parties will inform each other immediately. The Customer is at liberty to have content affected by the assertion removed or to modify it in such a way that there is no longer any infringement of rights or property rights. AZ has the right to exchange its concept or HTML documents, Java scripts, Active-X or other elements affected by the assertion or to modify them in such a way that there also is no further infringement of rights or property rights.

9.5 All rights to the domain used for the website remain with the Customer even after termination of the contract, if the Customer has paid the corresponding usage fee.

#### 10. limitation of Warranty and Liability:

10.1 AZ assumes no guarantee or liability that legally effective contracts will be concluded between the Customer and third parties who come into contact with one another through the contractual website or that such contracts can be proven. If general terms of use that the Customer wishes to use with third parties are included in the contractual website, AZ neither assumes responsibility for their legal effectiveness nor is AZ liable for their effective inclusion in the contract between the Customer and his customers. AZ also does not guarantee that data entered by the customer of the Customer for any orders, e.g. in input masks specially developed for this purpose, are correct or are transmitted correctly and unchanged to the Customer. Orders placed by third parties with the Customer via the contractual website are processed by the Customer exclusively at the Customer's own risk.

10.2 The Customer assumes the sole risk that the obligations imposed by law on the providers of websites, including all information obligations, are complied with.

### **C) General Provisions**

The following general provisions apply in addition to the provisions in A) and B) for all services provided by AZ. In the event of deviations, the special provisions in B) shall prevail.

## **I. Conclusion of a Contract**

1. Offers by AZ are subject to confirmation.
2. An order signed by the Customer is a binding offer that AZ can accept within two weeks of receipt by AZ by means of an order confirmation, by letter or e-mail or by providing the service.
3. A contract between the parties is concluded by AZ's order confirmation or by AZ's execution of the order and is based exclusively on the content of the order confirmation (if issued) and these GTC. Verbal agreements or promises require written confirmation to be effective.
4. AZ does not grant the Customer any rights of use to the offer documents prepared by AZ (in particular illustrations, text proposals, etc.). The Customer also may not make them accessible to third parties, but must return them to AZ immediately upon request.
5. If AZ is to use the services of third parties for the provision of its services according to the instructions of the Customer, the Customer is responsible for the granting of the rights of use to AZ by the third party necessary for the fulfilment of the order.
6. If, according to the agreement of the parties, addresses and data of third parties which were not yet licensed by AZ at the time the agreement was concluded, the agreement between AZ and the Customer is subject to the condition precedent that the third party agrees to the corresponding use.

## **II. Obligations of the Customer**

1. The Customer shall support AZ to the required extent and in the provision of its services. In particular, it shall provide AZ in good time with all information, materials, data and documents required for the provision of services (hereinafter referred to as "Provided Materials").
2. AZ is entitled to process the Provided Materials by the Customer and to make changes thereto, insofar as this is necessary for the provision of the contractual services and does not infringe the rights of the Customer or is not unreasonable for the Customer.
3. AZ is not obliged to inspect the Provided Materials by the Customer. The Customer guarantees AZ that the Provided Materials do not violate any legal provisions or the rights of third parties.
4. The Customer must in advance check the legality of all information, data, files, contents and other materials necessary for carrying out the advertising, including links of the advertising material to other websites (together "Advertising Material"), which he makes available to AZ for the performance of its services. The Customer is solely responsible for the legality of the Advertising Material; this does not apply to the degree they have been processed by AZ.

5. The Customer is obliged to ensure that the purpose, content and design of the advertising material and the target pages to which the respective advertising material refers do not in any way infringe the rights of third parties, in particular no trademark, patent or copyright rights. This also refers to the fact that it owns the rights of use necessary for the intended exploitation of the Advertising Material intended for publication and made available. The Customer shall also ensure and assure that it is entitled to use any links to other content integrated in its Advertising Material.

6. Furthermore, the Customer is obliged to ensure that the purpose, content and design of the Advertising Material and the target pages to which the respective Advertising Material refers comply with all applicable legal provisions including copyright, trademark, competition and criminal law as well as the special regulations for certain professions (lawyers, doctors, pharmacists, etc.) and product groups (pharmaceuticals, remedies, etc.) and do not violate official orders. In particular (without claim to completeness) the Customer is informed about the following legal regulations: Prohibition of unfair and misleading business activities (§§ 3, 5 UWG), §§ 1 and 2 of the Price Information Ordinance (PAngV), § 5 Telemediengesetz (TMG), Telekommunikationsgesetz (TKG), Rundfunkstaatsvertrag (RStV), Jugendmedienschutz-Staatsvertrag (JMStV), Energieverbrauchskennzeichnungsgesetz (EnVKG) and Energieverbrauchskennzeichnungsverordnung (EnVKV). The Customer must report infringing Advertising Material to AZ immediately after becoming aware of it and must arrange for everything necessary for the correction.

7. With regard to the Provided Materials in accordance with C) II. 1. to 3. and Advertising Material in accordance with C) II. 4. to 6. the Customer exempts AZ comprehensively and including the reasonable costs of legal defense from any claims by third parties in this regard. This also applies with regard to valid declarations of consent with regard to address data insofar as the Customer provides AZ with addresses and databases. The aforementioned obligations of the Customer do not apply with regard to changes to the Provided Materials and Advertising Materials provided by AZ.

8. AZ reserves the right to refuse or interrupt the placement or delivery of Advertising Material if there are indications that the Advertising Media or the target pages to which the respective Advertising Material refers violate the regulations under C) II. 3. to 6. or the placement or delivery do not correspond to legitimate interests of the operators of the marketed websites (marketing partners) or of AZ, or the delivery of the Advertising Material is unreasonable for AZ or the marketing partner due to their content, origin or technical quality on the basis of uniform and objectively justified principles. This also applies if the relevant Advertising Material has already been placed. AZ shall immediately notify the Customer of the non-publication of the Advertising Material, stating the reasons. In the event of a final refusal to place these Advertising Material, AZ's claim for remuneration will be reduced by the expenses saved as a result.

9. There is no obligation for AZ to check in advance with regard to the Advertising Material and/or links originating from Advertising Material (web URL) including the link contents. Any checks by AZ do not release the Customer from its responsibility for the Advertising Material and/or outgoing links (web URL) of Advertising Material including the link contents.

10. Insofar as systems of the Customer (e.g. website) are affected by the provision of services, the Customer shall immediately notify AZ of any malfunction that may occur, including a precise description of the respective form of appearance.





### **III. Prices, Payment**

1. If the contracting parties have not agreed on a certain price, the price shall be determined according to AZ's price list valid at the time of conclusion of the contract.
2. All prices quoted by AZ are in EURO plus the applicable statutory value-added tax. Any packaging, shipping or other costs incurred will be charged separately.
3. Unless otherwise agreed, invoices from AZ are due for payment upon receipt by the Customer.
4. If the Customer defaults on payment, AZ shall be entitled to demand default interest in the amount of 9% p.a. above the base interest rate. In addition, AZ is also entitled to demand higher interest for another legal reason or to claim further damage.
5. If the Customer defaults in payment or if AZ becomes aware of the risk of insufficient, culpably caused solvency on the part of the Customer after conclusion of the contract, AZ is entitled to withhold further services and to invoice all further services already rendered.
6. If an application for the opening of insolvency proceedings is filed against the Customer, AZ is entitled to withhold any further services, to invoice all further services already rendered and to make the provision of further services dependent on advance payment of the remuneration incurred for such services.
7. The customer is not entitled to withhold payments due to counterclaims or to offset them against counterclaims, unless the counterclaims are undisputed or have been legally established.

### **IV. Delivery Periods and Dates**

1. Agreed dates and deadlines shall only be binding if they have been confirmed in writing by AZ and the Customer has provided AZ in good time with all information and documents required for the performance of the service in accordance with the agreements made and paid any agreed down payments in accordance with the agreement. Agreed periods shall commence on the date of order confirmation. In the event of additional or extension orders placed at a later date, the periods shall be extended accordingly.
2. All services offered on the internet may be affected in particular by technical circumstances such as line and/or connection failures, transmission errors, network failures, hardware and software errors as well as third-party influences for which AZ is not responsible (e.g. by viruses or hacker attacks, etc.). The parties therefore agree that interruptions and/or disruptions in the provision of services based on such causes, for which AZ is not responsible, do not give rise to any rights of the Customer.
3. Unforeseeable, unavoidable events of force majeure beyond AZ's control and for which AZ is not responsible, such as war, acts of terrorism, natural disasters, fire, sabotage, official orders or industrial disputes release AZ from its obligation to deliver or perform on time for their duration. Agreed periods shall be extended by the duration of the disruption. AZ will inform the Customer of the occurrence of the disruption in an appropriate manner. If the end of the disruption cannot be foreseen or if it lasts longer than three months, each party is entitled to terminate the contract extraordinarily or to revoke

it. This also applies if service performance is no longer possible after prevention has ceased (e.g. because the booked placements have already been booked by another Customer).

4. If AZ's performance is delayed, the Customer shall only be entitled to withdraw from the contract if AZ is responsible for the delay and a reasonable deadline set by the Customer for performance has elapsed without success.

5. If there are delays in the provision of services for which the customer is responsible, for example due to subsequent requests for changes or delayed provision of information, the delivery may be postponed beyond the delay period. In this case, AZ is not obliged to provide the correspondingly delayed services as a matter of priority.

## **V. Shipping and Dispatch**

1. Unless otherwise agreed, the place of performance shall be AZ's place of business.

2. If AZ assumes responsibility for the transmission of the service results at the request of the Customer, the risk of accidental loss and accidental deterioration of the service results shall pass to the Customer at the time at which these leave AZ or are sent by AZ - also in the case of dispatch by e-mail. If dispatch is delayed by the Customer, the risk is transferred from AZ to the Customer upon notification of readiness for dispatch. In all other cases, the risk shall pass to the customer at the latest upon acceptance.

3. The Customer must examine the service results immediately after handover respectively transmission and, subject to any other written agreement between the parties, declare acceptance to AZ in writing within one week, unless acceptance is excluded due to the nature of the work. If the aforementioned period expires without a corresponding declaration by the customer, the service result shall be deemed to have been accepted. If the Customer unconditionally demands the use of a work result (e.g. activation of a website), the start of use shall be deemed to be the declaration of acceptance.

4. From the third correction loop onwards, requests for changes specified by the Customer will be invoiced at the agreed prices for the corresponding service. In the event of changes to the briefing by the Customer and newly added services, the additional costs incurred will be calculated by AZ and sent as a supplementary offer to the Customer for approval.

## **VI. Retention of title, rights of use**

1. The performance results remain in the sole property of and under the exclusive title of AZ until full payment of AZ's claims from the respective order.

2. AZ is entitled to all copyrighted usage and ancillary copyrights to the service results and work results prepared by AZ within the scope of the fulfilment of its contractual obligations, unless these GTC provide otherwise or the parties expressly stipulate otherwise.

## **VII. Customer's Rights in the Event of Defects, Duty of Inspection**

1. AZ does not guarantee the quality of its deliveries and services to the Customer, unless otherwise stipulated in these GTC.
2. Information in catalogues, price lists and other information material provided to the Customer by AZ do not contain any guarantees for a particular quality of the deliveries and services to be provided.
3. The customer's rights in the event of defects in deliveries and services require the customer to give notification in writing of any recognizable defects immediately, but no later than 14 calendar days after delivery or handover. The Customer must notify AZ in writing of any hidden defects immediately after they are discovered. In doing so, the customer has to indicate the defects with a concrete description of the appearance(s) with references to any error messages that may have appeared. In the event of any notification of defects, AZ is entitled to examine the corresponding deliveries and services. The Customer shall grant AZ the necessary time and opportunity to do so.
4. At its own discretion, AZ shall remedy defects by eliminating the defect free of charge for the Customer or by supplying partial or completely new deliveries and services as a substitute. The Customer shall grant AZ the time and opportunity necessary for this. If subsequent performance fails, if it is unreasonable for the Customer or if AZ has refused to perform due to disproportionate costs, the Customer may, at its discretion, revoke the contract in accordance with the statutory provisions, reduce the purchase price and claim damages or reimbursement of its expenses.
5. Rights of the Customer in the event of defects shall be excluded if defects occur for reasons caused by the Customer.
6. AZ shall assume the material, shipping, labour and other expenses incurred for the purpose of subsequent performance.
7. The limitation period for the rights of the Customer due to defects is 12 months from delivery respectively handover of the deliveries and services to the Customer. The statutory limitation periods shall remain in force for claims for damages by the customer for reasons other than defects in the deliveries and services as well as with regard to its rights in the event of fraudulently concealed defects or defects caused intentionally.

## **VIII. Confidentiality**

1. The content of the contractual conditions agreed by the parties in each individual case, information and documents provided to one another and all other confidential information (hereinafter "Information") shall be treated as strictly confidential by the Customer and may neither be disclosed to third parties nor passed on to third parties nor used by the Customer for purposes other than those directly connected with the fulfilment of the contractual obligations of the Customer.
2. The Customer is obliged to ensure that all his employees are obliged to maintain secrecy within the scope of the above provision.
3. The obligation of the Customer to maintain confidentiality does not apply if (i) the Information is demonstrably known in general or to the Customer or otherwise becomes generally known before conclusion of the contract without the Customer being responsible for this, (ii) the Information was

made available to the Customer by third parties on a non-confidential basis, unless the Customer was aware that this third party in turn violated an obligation of confidentiality with AZ by passing it on, (iii) the Customer is legally obliged to disclose the Information in judicial, official or other proceedings.

4. The confidentiality obligation extends for three years beyond the termination of the contractual cooperation between the parties.

#### **IX. Data Privacy**

1. AZ observes the relevant data protection regulations in relation to the Customer.

2. In particular, AZ points out to the Customer that personal addresses and data may only be processed in accordance with the provisions of the General Data Protection Regulation (GDPR), the Federal Data Protection Act (BDSG) and the Telemedia Act (TMG). The Customer must ensure compliance with all applicable legal provisions.

#### **X. Damages and limitation of liability**

1. AZ is liable without limitation for intent and gross negligence.

2. In the event of slight negligence, AZ shall only be liable in the event of a breach of cardinal obligations. Cardinal obligations are such obligations, the fulfilment of which is essential for the proper execution of the contract and compliance with which the contractual partner regularly relies and may rely upon. In these cases, AZ's liability is limited to foreseeable, typical and direct damage. AZ is not liable for the slightly negligent breach of insignificant obligations in the contractual relationship with the Customer.

3. The above limitations of liability shall not apply in cases of mandatory statutory liability (in particular under the Product Liability Act), in the event that AZ assumes a guarantee or in the event of injury to life, body or health.

4. The Customer is obliged to take appropriate measures to prevent and mitigate damage. In particular, he must ensure that he has also stored the addresses and data provided to AZ in other ways.

#### **XI. Final provisions**

1. Amendments and supplements to the contract and/or these GTC as well as ancillary agreements must be made in writing. This also applies to an amendment of this written form requirement.

2. The invalidity of individual provisions of these GTC shall not affect the validity of the remaining provisions. In this case, the parties undertake to replace the invalid provision with a valid provision that comes as close as possible to the legal and economic purpose of the invalid provision.

3. If the customer is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be Gütersloh. This also applies if the Customer has no general place of jurisdiction in the Federal Republic of Germany or has moved his usual place of residence abroad after conclusion of the contract. However, AZ is entitled to sue the Customer at any other legal venue under applicable law.

4. The law of the Federal Republic of Germany shall apply.