

**GENERAL TERMS AND CONDITIONS of AZ Direct GmbH
for list broking contracts with advertisers**

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AZ Direct GmbH (hereinafter "AZ") shall grant the right to use the address owner's addresses/data for advertising purposes to an advertiser, based on the following general terms and conditions (hereinafter "GTC") and within the scope of individual contracts to be negotiated. Insofar as another, additional list broker shall be granted usage rights by AZ, the former shall, in turn, be entitled to grant the usage rights he has been granted to the advertiser specified in the relevant individual order.

1. Definitions

1.1 "Addresses" in the sense of these GTC shall include home, business and/or e-mail addresses. Insofar as no other agreement shall be made, the home address shall, in general, consist of the following address elements: first name, surname, title, form of address, postal code, place, street, house number. Insofar as no other agreement shall be reached, the business address shall, in general, consist of the company name, postal code, place, street and house number together with a contact: first name, surname, title, form of address, position. In addition to this, the addresses shall include the email address or telephone number, insofar as this has been expressly agreed.

1.2 "Data" in the sense of these GTC shall include the following elements, insofar as nothing else shall have been agreed: "hard" information for an address (e.g. year of birth for a home address and, e.g., year of founding, sector in the case of a business address); statistical information (e.g. deduction of age based on analysis of the first name and explicit in the case of a business address, e.g. revenue category, number of employees for an address); "hard" information on the spatial surroundings (e.g. federal region, state, street) and statistical information (e.g. purchasing power in a section of a street) on the spatial surroundings.

1.3 "Inserts" and/or "Insert capacities" are options for insertion in a wide range of media at mail-order companies or publishers (the "insert senders"). These include, e.g. packages, invoices, letters, catalogs, payment reminders, etc. within the meaning of these GTC.

1.4 "List brokers" in the sense of these GTC are those who purchase the usage rights for addresses/data from the owner of the addresses or other list brokers and grant them (directly or indirectly via other list brokers) to advertisers for advertising purposes.

1.5 "Advertising" in the sense of these GTC shall include the advertising measure, for example the mailing shot incl. inserts which is sent out.

2. Subject of the contract

2.1 AZ shall grant the advertiser the non-exclusive and non-transferable right to use the addresses/data or insert capacities encompassed by the individual order to carry out the advertising measures agreed. Unless otherwise agreed, the addresses/data may only be used for one piece of advertising and not for cooperative advertising. The advertiser shall, furthermore, not be entitled to enclose external advertising material with its own advertising. When using insert capacities no addresses/data shall be provided to the advertiser. Furthermore, no claim may be asserted concerning shipment of the advertising to any designated customers of the insert shipper.

2.2 The content and the design of the advertising must be agreed with AZ prior to its dispatch. AZ is not obliged to examine the advertising material sent by the advertiser; the former is however entitled to refuse the shipment without stating any reasons for this. AZ is further entitled to postpone shipment until the legality of the advertising has been definitively clarified, where AZ assumes that the advertising is illegal. AZ shall immediately notify the advertiser of any refusal or non-shipment of the advertising. The advertiser guarantees to AZ that the advertising material and its contents do not violate any legal or official orders or any third party rights nor offend against common decency and fully indemnifies AZ against any claims brought by third parties in this respect and including the appropriate costs of any legal defense. The indemnity also covers any court and legal fees as well as administrative fines and contractual penalties that may be incurred.

2.3 Any changes to the advertising means already agreed must be re-submitted for approval. The shipper is not obliged to insert the advertising material that has been subsequently altered.

2.4 Insofar as the advertiser shall receive orders or enquiries resulting from the use of the addresses or the insert capacities, he shall be authorized to integrate the addresses of these persons permanently into its own address lists. This shall not apply to promotional competitions, games or similar events; such events shall require conclusion of a separate agreement. In all other cases, the property/intellectual property rights and/or usage rights to the addresses/data generated by the owner of the addresses shall remain with the owner of the addresses.

2.5 The provisions of the relevant individual order shall have exclusive validity; they shall be subordinate to these GTCs. In particular, the consultation requirements and limitations on the scope of usage defined in the relevant individual order shall apply. These GTCs shall also apply to all future individual orders unless otherwise agreed.

2.6 The advertiser shall bear sole responsibility for production of the advertising and for the legal permissibility of the usage of the addresses/data provided within the scope of the advertising.

2.7 Insofar as another list broker shall be granted usage rights by AZ, these GTCs shall apply accordingly. The other list broker shall, in turn, only be authorized to grant the usage rights to an advertiser. AZ may withdraw from an individual order with the additional list broker providing no binding agreement regarding the use of the addresses/data has come into effect between the additional list broker and the advertiser. The usage rights granted within the scope of the individual order shall automatically expire with the exercise of this right of withdrawal.

2.8 Insofar as AZ shall be obliged to also provide additional services related to the processing of order data, production and processing of advertising material in connection with the agreed services (e.g. address rental following electronic comparison), then only the version of the GTCs "Allgemeine Geschäftsbedingungen der AZ für Lieferung und Leistungen in Bezug auf Auftragsdatenverarbeitung, Herstellung und Verarbeitung von Werbemitteln" "General Terms and Conditions of AZ for Delivery and Services Related to Order Data Processing, Production and Processing of Advertising Materials" currently valid at the time the contract is concluded shall apply for these services.

2.9 Insofar as AZ shall be obliged to provide additional services related to addresses and data in connection with the services agreed, then only the version of the GTCs "Allgemeine Geschäftsbedingungen der AZ für Lieferung und Leistungen in Bezug auf Adressen und Daten" [General Terms and Conditions of AZ for Delivery and Services Related to Addresses and Data] currently valid at the time the contract is concluded shall apply for these services.

2.10 Insofar as AZ shall be obliged to provide additional services related to agency or consulting services in connection with the services agreed, then only the version of the GTCs "Allgemeine Geschäftsbedingungen der AZ für Beratungs- und Agenturleistungen" "General Terms and Conditions of AZ for Consulting and Agency Services" currently valid at the time the contract is concluded shall apply for these services.

3. Remuneration

3.1 The remuneration provisions agreed in the relevant individual order shall apply. All prices shall exclude the relevant statutory value added tax and the costs for packing and shipping (freight, postage), which shall be calculated separately.

3.2 All invoices shall be due for payment immediately and strictly net. Payments on the part of the advertiser shall only be deemed to have been made when AZ has the sum at its disposal. Bills of exchange and checks will only be accepted as conditional payment upon special agreement and shall be free of charge and expenses for the advertiser.

3.3 Should AZ become aware of the risk of poor performance on the part of the advertiser following conclusion of the contract, in particular if the advertiser should default on payments for which reminders have been issued, then AZ shall be entitled to carry out outstanding services only against advance payment or provision of a security. If the advance payments or securities have not been provided following expiry of an appropriate extended deadline, then AZ may withdraw either entirely or partly from some or all of the contracts concerned. The assertion of additional rights shall remain reserved.

3.4 The advertiser shall only be entitled to carry out offsetting if its counterclaim is uncontested or has been legally established.

3.5 The advertiser shall only be authorized to assert a right of retention insofar as its counterclaim relates to the same contract, is uncontested or has been legally established.

4. Data protection

4.1 For the purpose of executing the usage rights granted within the scope of individual orders, the owner of the addresses has commissioned AZ to process and select the addresses/data and also use them for advertising within the scope of data processing bound by instructions in the sense of Section 11 of the German Federal Data Protection Act and to the extent of the usage rights granted and the more specific provisions in the relevant individual orders. AZ, in turn, shall herewith commission the advertiser or its service provider accordingly as per the provisions of Clause 4 hereto, insofar as this shall be envisaged in the individual order.

4.2 The addresses/data shall be collected, processed and used according to the instructions of the owner of the addresses, which he shall issue to the advertiser or its service provider directly or via AZ. Within the scope of data processing, the owner of the addresses shall remain the responsible body for collecting, processing and using the addresses/data unless otherwise agreed in the individual order. The advertiser may only use those employees who have agreed to comply with Section 5 of the German Federal Data Protection Act.

4.3 In order to protect the addresses/data, technical and organizational measures must be taken which are necessary to meet legal data protection requirements. The owner of the addresses and AZ shall each be entitled to satisfy themselves regarding the technical and organizational measures taken by means of suitable measures chosen by them. The advertiser shall assist the owner of the addresses and AZ in the case of enquiries and complaints by individuals affected as well as in the case of enquiries and checks by the relevant supervisory authorities. The advertiser shall reimburse AZ for any expenses incurred in connection with this.

4.4 In order to carry out processing of the order data, the advertiser may make use of other service providers insofar as the latter shall be obligated in accordance with the provisions of Clause 4 hereto. The advertiser shall be obliged to carefully select the service provider on behalf of the owner of the addresses, taking into particular consideration its suitability, and obtain AZ's agreement so that AZ and owner of the addresses may verify the selection. The advertiser must ensure that the service provider agrees to comply with the provisions specified in this clause. The owner of the addresses shall remain the responsible body for gathering, processing and use of the addresses/ data. The advertiser shall be responsible to AZ for all actions on the part of the service provider as well as for all actions on the part of its own employees.

4.5 Insofar as an additional list broker shall be granted usage rights by AZ, the former may act as the order processor in accordance with the provisions of Clause 4 hereto instead of the advertiser.

5. Delivery periods and deadlines

5.1 Periods or deadlines for deliveries or services shall only be binding if they have been confirmed in writing by AZ to the advertiser and the advertiser has provided or made available all information and documentation required to carry out the delivery or service in good time and has made any payments agreed in the manner agreed. Any periods agreed shall commence on the date of the order confirmation by AZ. The periods shall be extended accordingly in the case of any additional or extended orders subsequently made. Deliveries must be made as detailed in the order confirmation. Any changes made by the advertiser, e.g. a postponement of agreed deadlines must be agreed with AZ in advance. If the parties agree to send out promotional mailings according to a number of different deadlines, AZ is entitled to change the scope of the respective promotional mailing for each deadline if a mailing of the agreed quota is guaranteed within the agreed performance period.

5.2 Unforeseeable and unavoidable events as well as events outside of AZ's sphere of influence and beyond its control, such as force majeure, war, natural disasters, official directives or industrial disputes, shall release AZ from the obligation to provide timely deliveries or services for the period of the duration of said events. Any times agreed shall be extended by the period of the disruption; the advertiser shall be informed of the occurrence of the disruption in an appropriate manner. Should the end of the disruption be unforeseeable or should it last longer than three months, then each party shall be entitled to withdraw from the contract.

5.3 Should timely deliveries or services be delayed because of AZ, the advertiser shall only be entitled to withdraw if AZ is responsible for the delay and an appropriate deadline set by the advertiser for a delivery or service has passed without success.

6. Delivery / Shipment

Insofar as delivery of the addresses/data in physical form (data carriers, lists, etc.) shall be agreed, then the shipment shall be effected according to AZ's choice via an appropriate shipping route in the standard packaging at the advertiser's risk. In such a case, the risk shall be transferred to the advertiser upon transfer of the addresses/data to the transport company or the advertiser itself. In the case of delivery of the addresses/data by electronic means (Internet, etc.) the risk of accidental loss shall be transferred to the advertiser upon dispatch of the addresses/data.

7. Guarantee and liability

7.1 AZ shall relinquish to the advertiser any and all claims and rights in the case of defects resulting from the contract with the sender of the addresses and/or inserts concerning the addresses/data as well as possible additional guarantee claims and rights resulting from other violations of obligations against the sender of the addresses and/or inserts. The right to fulfillment of the contract with the sender of the addresses and/or inserts as well as claims for compensation for any damages incurred by AZ and claims for return, in particular claims resulting from, or in connection with, payments made by AZ shall not be relinquished to the advertiser.

7.2 Insofar as the advertiser shall have claims against the sender of the addresses and/or inserts resulting from its own rights, the advertiser shall be obliged to first assert its claims resulting from its rights.

7.3 Insofar as claims and rights shall be relinquished to the advertiser, the latter shall be obliged to assert these claims in its own name with the proviso that, in the case of withdrawal from the contract with the sender of the addresses and/or inserts or in the case of reduction of the price (diminution), possible payments on the part of the sender of the addresses and/or inserts shall be made directly to AZ.

7.4 The advertiser shall not be entitled to any claims or rights against AZ due to defects in the addresses/data and/or inserts or any other violations of obligations on the part of the sender of the addresses and/or inserts.

7.5 Insofar as AZ shall not have concluded a direct contract with the sender of the addresses and/or inserts and purchases the usage rights via a contract with an additional list broker, then Clauses 7.1 to 7.4 of these GTCs shall apply accordingly to claims against the additional list broker or claims against the sender of the addresses and/or inserts which the list broker has relinquished.

7.6 The advertiser alone shall bear the risk that assertion of the rights and claims relinquished to him should fail due to the insolvency of the sender of the addresses and/or inserts.

7.7 The advertiser shall only be entitled to claims for damages against AZ insofar as the damages were caused by willful intent or gross negligence on the part of AZ or the defect was maliciously concealed by AZ; in cases of injury to life, limb or health as well as the violation of key contractual obligations, AZ shall also be liable for simple negligence. The aforementioned limitations of liability shall not apply in cases of compulsory legal liability in accordance with the German Product Liability Act as well as in cases of acceptance of a guarantee.

7.8 Details in catalogs, price lists and any other information material provided by the owner of the addresses or by AZ to the advertiser shall not be understood as an assurance of a specific characteristic of the service or delivery to be performed.

8. Unauthorized use of addresses/data and contractual penalties

8.1 The owner of the addresses and AZ are individually entitled to verify that these agreements are being adhered to, e.g. by means of control addresses or control numbers on the individual lists.

8.2 For each case in which addresses/data are used in violation of Clause 2.1, the advertiser shall be obliged to pay a contractual penalty equivalent to ten times the fee for the order from which the addresses or data in question originate.

8.3 For each case in which addresses/data are processed or used in violation of Clause 4, the advertiser shall be obliged to pay a contractual penalty equivalent to ten times the fee for the order from which the addresses or data in question originate.

8.4 For each case in which addresses/data are processed or used in violation of the provisions of the individual order, the advertiser shall be obliged to pay a contractual penalty equivalent to ten times the fee for the order from which the addresses or data in question originate.

8.5 For each case in which addresses/data or insert capacities are processed or used in violation of any other provisions of these GTCs, the advertiser shall be obliged to pay a contractual penalty equivalent to ten times the fee for the order from which the addresses or data in question originate.

8.6 Insofar as one action simultaneously triggers contractual penalties under more than one of Clauses 8.2, 8.3, 8.4 and 8.5, then only one contractual penalty shall be triggered, i.e. the contractual penalties shall not be added together.

8.7 Proof of use of a control address/control data in violation of the contract shall be sufficient as proof of use of addresses/data in violation of the contract.

8.8 AZ shall retain the right to assert further claims for damages, in particular claims for damages which the sender of the addresses and/or inserts may assert against AZ. In the case of a claim for damages, the contractual penalty will be offset against this claim.

9. Third-party rights

Insofar as the copyright-related reproduction and exploitation rights of third parties shall be infringed by the processing of the address/data portfolio provided by the owner of the addresses, and claims are asserted against the owner of the addresses and/or AZ by third parties on grounds of alleged infringement of third party rights (in particular of copyright-related exploitation rights), the advertiser shall, upon initial request, indemnify the owner of the addresses and/or AZ against these claims in full and reimburse the owner of the addresses and/or AZ for the full sum of the costs required for a legal defense.

10. Legal obligation to provide information about data protection laws and the rights of individuals affected

10.1 The legal obligation to provide information about the right of objection in accordance with Section 28(4) of the German Federal Data Protection Act and/or Section 13(3) of the German Telemedia Act shall be sufficient for the advertiser. Objections received by the advertiser shall be forwarded immediately to AZ. The advertiser shall refrain from sending any further advertising itself or in its own name to addresses for which it has received an objection.

10.2 AZ points out that unsolicited electronic or telephone advertising campaigns to consumers are not permissible. The provision of e-mail addresses or telephone numbers by the owner of the addresses shall not replace the consent of the relevant consumer; therefore, the advertiser shall bear the risk of a warning notice.

10.3 Should the data protection law-related claims of the individuals affected be asserted, the advertiser shall undertake all measures to assist the owner of the addresses and AZ in the fulfillment of rights of the individuals affected. AZ and the owner of the addresses shall be permitted to provide the individuals affected with the name of the advertiser.

11. General provisions

11.1 Alterations and additions to the contract and/or these General Terms and Conditions as well as any sub-agreements must be given in writing. This shall also apply to any change to this written form requirement.

11.2 Deviating and supplementary general terms and conditions on the part of the advertiser or list broker shall not be valid even if the latter refers to them and AZ does not explicitly object to them.

11.3 Should any provision of the contract and/or these General Terms and Conditions be fully or partially invalid, then the validity of the remaining provisions shall remain unaffected. In such a case, the parties shall be obliged to replace the invalid provision with the valid provision coming as close as possible to the economic intent of the invalid provision.

11.4 The advertiser agrees that AZ shall name it as a reference client, also following the end of an order. This shall also include permission to use the advertiser's name for marketing purposes. The advertiser shall be entitled to object in writing at any time to being named as a reference client.

11.5 Should the advertiser be a merchant in the sense of German law, a legal entity under public law or a special fund under public law, then the sole place of jurisdiction for any and all disputes arising from the contractual relationship shall be Gütersloh. This shall apply equally if the owner of the addresses does not have a general place of jurisdiction in Germany or, following conclusion of the contract, shall transfer its usual domicile abroad. AZ shall, however, be entitled to bring an action against the owner of the addresses before any and all other places of legal jurisdiction.

11.6 These General Terms and Conditions are subject to German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.