

# General Terms and Conditions in Respect of Placement of Advertising Material for [www.zalando.es](http://www.zalando.es) in the Context of the Zalando Partner Programme

## Clause 1 Scope

**1)** These General Terms and Conditions of Business shall apply to the contractual relationship between Zalando GmbH, Sonnenburger Str. 73, 10437 Berlin (hereinafter referred to as "Zalando") and partners in the Zalando partner programme, which Zalando operates via the distribution platform of ZanoX GmbH (hereinafter referred to as the "Zalando Partner Programme"). The Partner's own terms and conditions of business shall require the express written consent of Zalando and shall therefore not be applicable even if Zalando does not object to their validity.

**2)** The following Terms and Conditions shall apply in relation to Zalando for the Zalando Partner Programme even if they diverge from the "General Terms and Conditions of Business for Participation in ZanoX" (hereinafter referred to as "ZanoX Terms and Conditions of Participation").

**3)** These General Terms and Conditions of Business shall not apply in relation to consumers within the meaning of section 13 of the *Bürgerliches Gesetzbuch* (German Civil Code - BGB).

## Clause 2 Contract Formation

A contract between Zalando and a Partner in respect of the placement of Zalando advertising materials shall be formed exclusively via the ZanoX platform's application procedure, in the context of which the Partner shall submit a bid to participate in the Zalando Partner Programme, thereby accepting these General Terms and Conditions of Business. The application procedure itself shall not be governed by these General Terms and Conditions of Business, but by the ZanoX Terms and Conditions of Participation. The Partner shall have no entitlement to acceptance of said bid or to formation of a contract with Zalando. The Partner shall be informed by ZanoX of its inclusion in the Zalando Partner Programme.

## Clause 3 Subject of the Contract

**1)** The subject of this Contract shall be participation in the Partner Programme and promotion of Zalando ([www.zalando.de](http://www.zalando.de)) by the Partner as a publisher in the context of the ZanoX platform. To this end, Zalando shall make a selection of advertising materials (e.g. advertising banners, buttons, text links) available to the Partner as an advertiser via the Partner Programme.

**2)** The Partner shall be solely responsible for placing the Zalando advertising materials on its website(s) registered in the Zalando Partner Programme (hereinafter referred to as "Partner Website"). The Partner shall be free to decide whether and how long to place the Zalando advertising materials on the Partner Website. It shall be entitled to remove the Zalando advertising materials again at any time.

**3)** In return for the promotion and successful brokerage of transactions (e.g. orders), the Partner shall receive from ZanoX a brokerage commission, which shall depend on the extent and real value of the service. Recognition and scale of this commission shall be determined in accordance with the agreements entered into with ZanoX and shall not be the subject of these General Terms and Conditions of Business.

**4)** The Zalando Partner Programme shall not establish any other contractual relationship between the Parties that goes beyond this Contract.

**5)** Zalando shall reserve the right to amend these General Terms and Conditions of Business at any time. The Partner shall be informed of any changes via e-mail. Should the Partner not agree to the changes, it shall be entitled to inform Zalando thereof until four weeks after receipt of the notification of the change. If the Partner does not provide such notification within this period, the changes shall be deemed to have been accepted and shall take effect at the end of the period. Zalando shall, in its notification of the change, advise the Partner of the importance of the four-week deadline.

## Clause 4 Obligations of the Partners

**1)** The Partner shall be expressly prohibited from using advertising material other than that made available to it by Zalando via Zanox and from modifying said material without authorization.

**2)** Mailing partners shall be activated separately. The Partner shall not, without prior written consent, be allowed to use advertising e-mails to promote Zalando.

**3)** The Partner itself shall be responsible for the content and routine operation of its Partner Website and shall, for the term of this Contract, place on said Website no content that breaches applicable law, public morals or third-party rights. Prohibitions shall include, but not be limited to, representations that glorify violence, sexual and pornographic content and illustrations, misleading statements or discriminatory content (e.g. in respect of gender, race, politics, religion, nationality or disability). Such content may neither be mentioned on the Partner Website, nor may links be created from the Partner Website to corresponding content on other websites.

**4)** The Partner shall be prohibited from maintaining on the Internet websites that might give rise to a risk of confusion with the web presence of Zalando. The Partner shall be allowed neither to mirror said presence nor to copy graphics, texts or other content from Zalando's website. In particular, the Partner shall avoid the impression that the Partner Website is a project of Zalando or that its operator is economically linked to Zalando in any way that goes beyond the Zalando Partner Programme and this Contract. Any use, by the Partner, of materials or content from Zalando's web presence or its logos or brands shall require Zalando's prior written approval.

**5)** The Partner shall undertake to carry out e-mail advertising solely in compliance with the double opt-in procedure and in accordance with all relevant competition law provisions and information requirements under consumer law, particularly the legal notice and the unsubscribe option. The Partner shall indemnify Zalando against all third-party claims on account of misleading and/or missing and/or incorrect information in the advertising e-mails that fall within the Partner's area of responsibility.

**6)** The Partner shall be liable, vis-à-vis Zalando, for ensuring that its advertising e-mails are in neither direct nor indirect breach of domestic and/or foreign third-party property rights and/or other rights that do not enjoy any special statutory protection.

**7)** The Partner shall undertake not to use the name "Zalando" either in the e-mail address of the sender or in the subject line of the e-mail, or in the source code, and shall ensure that the Partner is sufficiently identifiable as the sender of the advertising e-mail.

All advertising materials shall, prior to use, require Zalando's approval, either in written or electronic form.

**8)** Search engine marketing and other keyword-based advertising for the Zalando brand and private labels shall not be permitted; in other words, "Zalando" must be entered as a negative keyword. In the event of a breach, all generated sales shall be cancelled.

Site links in Google AdWords advertisements may be entered in connection with Zalando only if they refer to a landing page of the Partner Website on which Zalando is exclusively promoted. Site links may expressly not be placed on the Zalando brand or on misspellings or generic terms related to the Zalando product range, nor shall direct forwarding from within the Google advertisement be permitted.

Product lists within Google shopping product search may be used in connection with Zalando only if they refer to a landing page of the Partner Website. Placing product lists on Zalando's private labels shall be expressly prohibited.

**9)** The Partner shall warrant that it will set cookies only if advertising material made available by the Zalando Partner Programme is in visible use on the Partner Website and the user clicks voluntarily and consciously. The use of layers, add-ons, iFrames and postview technology shall, in principle, not be permitted and strictly prohibited.

**10)** The Partner may promote solely vouchers that Zalando has approved explicitly for affiliates and/or communicated by means of Partner newsletters. The promotion of other vouchers, for instance from end customer newsletters, print advertisements or customer service contacts, shall not be permitted. In the event of any breach, all transactions shall be cancelled.

**11)** Any culpable infringement, by the Partner, of the foregoing paragraphs 1) – 10) or any other industrial property rights or copyright of Zalando shall entitle Zalando to terminate this Contract for good cause in accordance with the statutory provisions. This shall not affect any additional claims against the Partner to which Zalando is entitled. In particular, Zalando shall be entitled, vis-à-vis the Partner, to withhold or cease all and any services related to said Partner.

**12)** The Partner shall remove Zalando advertising material without delay from the Partner Website if Zalando requests it so to do.

**13)** If Zalando is sued by third parties on account of the Partner's culpable breach of contractual obligations, particularly those set out in the foregoing paragraphs 1) – 10), or on account of the Partner's violation of a statutory provision in relation to the placement of Zalando advertising material, the Partner shall be obliged to indemnify Zalando against all third-party claims that are asserted on account of the aforementioned breaches. If, for its legal defence, Zalando requires the Partner to provide information or explanations, the Partner shall be obliged to make same available to Zalando without delay and also to provide reasonable support to Zalando in its legal defence.

The Partner shall, in such cases, be obliged to reimburse Zalando, in accordance with sections 683, 670 of the BGB and sections 830, 840, 426 of the BGB, for any expenses arising from or in connection with measures carried out by Zalando.

In addition, the Partner shall compensate Zalando for any costs resulting from a claim by third parties on account of the infringement of the aforementioned rights and/or obligations; such costs shall, for example, include lawyers' fees (hourly rate of 500 EUR), court costs, particularly costs of independent proceedings for taking evidence, damages and other disadvantages that Zalando suffers thereby.

## Clause 5 Services of Zalando

**1)** Once the Partner has been admitted to the Zalando Partner Programme, it shall be provided with a wide range of advertising material, which shall be adapted at regular intervals in line with the product range and seasonal influences. The Partner may request individual provision of formats or newsletter templates from Zalando at any time.

**2)** Zalando shall operate its website and the services offered thereon, such as the provision of product data, within the limits of the technical capacities available to Zalando. Zalando shall not be obliged, within these limits, to provide error-free and interruption-free availability of the website. The quality and correctness of the products, advertising material and csv files offered by Zalando on the website shall fall within the exclusive discretion of Zalando.

**3)** All activities of the Partner shall be logged via the Zanox tracking system and made accessible to the Partner via Zanox statistics and reports. The commission that Zanox pays to the Partner once a month shall be based on the brokered orders and the resulting net shopping basket value. All net sales that are completely retained by

the customer after delivery and all net sales retained by the customers after partial returns shall also be taken into account here. The Partner information of the Zalando Partner Programme on the ZanoX platform shall contain the current commission rates.

**4)** The Partner shall, in the context of its participation in the ZanoX platform and in accordance with the terms and conditions that it agreed with ZanoX in this respect, be entitled to receive a commission from ZanoX in relation to transactions that are generated, by its active promotion of Zalando on the Partner Website registered with the Partner Programme, within the first session and for thirty days thereafter.

## Clause 6 Liability

**1)** Zalando shall, in the event of wilful intent or gross negligence, be liable without limitation for injury to life, limb and health in accordance with the provisions of the *Produkthaftungsgesetz* (German Product Liability Act) and to the extent of any guarantee undertaken by Zalando.

**(2)** In the event of an ordinarily negligent breach of an obligation which is material to the achievement of the contractual purpose (material contractual obligation), the liability of Zalando shall be limited in amount to the damages that are foreseeable and typical in accordance with the type of transaction in question.

**(3)** No further liability on the part of Zalando shall exist.

**(4)** The aforementioned limitation of liability shall also apply to the personal liability of Zalando's employees, representatives and executive bodies.

## Clause 7 Term of Contract and Termination

**1)** The term of this Contract shall be based on the duration of the Partner's membership of the Zalando Partner Programme in the context of the ZanoX platform.

**2)** Following termination of the Contract, the Partner shall, without being requested so to do, immediately delete the information and advertising material submitted to it. The Partner shall have no right of retention in this respect. The Partner shall, at Zalando's request, provide Zalando with written confirmation of the deletion.

## Clause 8 Confidentiality

**1)** Confidential information shall be any information and documents belonging to the respective other Party that has been marked as confidential or can be regarded as confidential based on the circumstances. This shall include, in particular, information about terms and conditions, sale specifications and evaluation materials that are made available to the Partner by Zalando employees.

**2)** The Parties shall agree to maintain silence in respect of confidential information. The Partner shall disclose confidential information only to those employees that need to be aware of it to implement this Contract. The Partner shall oblige said employees to maintain secrecy in respect of the confidential information during and after their activity.

**3)** The duty of non-disclosure shall apply for an unlimited period beyond the term of this Contract.

## Clause 9 Assignment, Rights of Retention, Set-Off

**1)** The Partner may transfer claims against Zalando based on this Contract to third parties only with Zalando's written consent.

**2)** Either Party to the Contract may set off or exercise a right of retention only in relation to the other Party's receivables that are uncontested or have become *res judicata*.

## Clause 10 Final Provisions

**(1)** This Contract shall be governed by the law of the Federal Republic of Germany without giving effect to any international and supranational (contractual) laws, particularly the UN Convention on the International Sale of Goods.

**(2)** The sole place of jurisdiction for any disputes arising from the contractual relationship shall be Berlin, which sole jurisdiction shall also apply to international matters. Zalando may alternatively take legal action at the Partner's general place of jurisdiction.

**(3)** There shall be no oral ancillary agreements to this Contract. Amendments and addenda to the Contract shall require the written form. This shall also apply to the amendment or rescission of this clause. Documents provided in electronic form shall not comply with the written form requirement.

**(4)** Should individual provisions in this Contract be invalid or unenforceable, this shall not affect the validity of the other provisions. The Parties to the Contract shall endeavour to replace the invalid or unenforceable provision with one that best meets the contractual objective in legal and economic terms. The same shall apply in the event of a lacuna.

Should you have any queries, please do not hesitate to contact the Zalando Affiliate Team at the following address:

Zalando GmbH  
Samantha Wnuk  
Head of Affiliate Marketing

Samantha.Wnuk@zalando.de  
Tel. 030 / 200 08 81 68

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