

## TERMS OF PARTICIPATION FOR THE AFFILIATE PROGRAMME OF OUTLETCITY METZINGEN

These Terms of Participation (the “Terms of Participation”) govern the participation of online advertising partners (“Publishers”) in the affiliate program (“OUTLETCITY Affiliate Program”) operated by OUTLETCITY METZINGEN GmbH (“OUTLETCITY METZINGEN”) through the affiliate network of AWIN AG (“AWIN”), and apply in addition to AWIN’s General Terms and Conditions for Publishers (the “AWIN Terms and Conditions”), available at <https://s3.amazonaws.com/docs.awin.com/Legal/Publisher+terms+and+conditions+2019+DE.pdf>. OUTLETCITY METZINGEN is an advertiser within the meaning of the AWIN Terms and Conditions, and the Publisher is a publisher.

### 1. The OUTLETCITY Affiliate Programme

- 1.1 The OUTLETCITY Affiliate Programme makes possible for Publishers registered with AWIN to advertise the online offering of OUTLETCITY METZINGEN (“OUTLETCITY **Online Offering**”) for a commission.
- 1.2 OUTLETCITY METZINGEN decides based on the information provided by AWIN whether the Publisher shall be admitted to participate in the OUTLETCITY Affiliate Programme and upon a positive decision enters into a contract with the Publisher (each, a “**Participation Agreement**”). A Publisher has no right to the conclusion of a Participation Agreement.

### 2. Participation Requirements and registration in the OUTLETCITY Affiliate Programme

- 2.1 The Publisher must be a business entity within the meaning of Section 14 of the German Civil Code (BGB).
- 2.2 The Publisher must possess its own website or other such online presence (collectively “**Publisher’s Website**”) and provide those URLs as a part of the registration to the OUTLETCITY Affiliate Programme or at a later date, unless OUTLETCITY METZINGEN objects.
- 2.3 The Publisher’s Website must
  - (a) include a Legal Notice in accordance with Section 5 of the German Digital Services Act (DDG)
  - (b) a Privacy Policy which contains the information required under Articles 13 and 14 of the General Data Protection Regulation (GDPR)

- (c) comply with all further legal requirements, in particular arising from the processing of personal data, advertising and digital services.

2.4 The Publisher's Website must not be operated on a typo-squatting (misspelled) domain and must not include content which

- (a) violates any applicable law or is contrary to public policy or is political in nature,
- (b) Infringes upon any trademarks, copyrights, trade secrets or other intellectual property or proprietary rights of OUTLETCITY or any third party,
- (c) contains obscene, racist, pornographic material, or material that glorifies violence, or which is harmful to minors or is of a nature that endangers or impairs the development of children and adolescents,
- (d) is derogatory or discriminatory in nature, contains material that constitutes harassment, defamatory remarks or any other characteristic of personal attacks or
- (e) solicits participation in chain letters or pyramid schemes.

### **3. Rules for the advertisement of the OUTLETCITY Online Offering**

3.1 The Publisher may promote the OUTLETCITY Online Offering by placing banner advertisements on its own Website, using text links, or through other promotional materials that have been agreed upon in advance with OUTLETCITY METZINGEN. Should the Publisher wish to use other advertising material, the details must be agreed upon with OUTLETCITY METZINGEN in advance, and the material is subject to approval by OUTLETCITY METZINGEN.

3.2 OUTLETCITY METZINGEN shall make available to the Publisher a selection of ad material (e.g. graphics, text links, etc.) via AWIN for the contractual use agreed upon. The Publisher must exclusively use only these ad materials on the Publisher's Website.

3.3 In the case of a change of domain name, the content focus or commercial purpose of the Publisher's Website, the Publisher shall inform OUTLETCITY METZINGEN one month in advance and give notice of the date on which the change is planned to take effect. Insofar that OUTLETCITY METZINGEN does not object to the continuing advertisement of the OUTLETCITY Online Offering, the Publisher may continue to integrate the provided ad material on its Website. Insofar that OUTLETCITY METZINGEN objects to the continuing advertisement of the OUTLETCITY Online Offering, the Publisher must immediately remove the affected ad material from its Website.

- 3.4 The Publisher may not use the advertising material in a way that creates a likelihood confusion with the website of OUTLETCITY METZINGEN or creates the impression that it is a part of the website of OUTLETCITY METZINGEN. The Publisher's Website and use of the advertising material shall also not create any impression that the Publisher has any right to represent OUTLETCITY METZINGEN in legal transactions or to make declarations with legal effect for or against OUTLETCITY METZINGEN.
- 3.5 The creation of additional cookies is only permitted when the affected advertising material from OUTLETCITY METZINGEN is visible and the cookie is created only after the respective customer has made a conscious decision.
- 3.6 Promotion of the OUTLETCITY website by means of unsolicited email advertising in violation of the German Unfair Competition Act (UWG) is prohibited. Correspondingly, the recipient of email advertising from the Publisher must have previously explicitly authorised this by means of a double opt-in procedure, and advertising emails must contain an option to opt-out. In addition, the Publisher must ensure that they are clearly recognisable as the sender of the emails, and the Publisher must not give the impression that OUTLETCITY METZINGEN arranged for the dispatch.
- 3.7 Every use of the terms OUTLETCITY METZINGEN, OUTLETCITY.COM, OCM or other partner company's protected terms or trademarks (in particular: Tommy Hilfiger, JOOP!, Windsor., Strellson, Pepe Jeans, Levi's®, Gant, Escada, Escada Sport, Lacoste, Diesel, Mustang, Strenesse, Dockers and further future brands that become a part of the OUTLETCITY online offering) their logos and product images, insofar as the use goes beyond the prescribed presentation as advertising material, is only permitted with prior written approval from OUTLETCITY METZINGEN, excepting cases where the owner of the respective rights has granted the Publisher permission for the specific use. The use of these names or terms as domain names or URLs by the Publisher is expressly forbidden.
- 3.8 Promotion of the OUTLETCITY website by means of Search Engine Marketing (SEM) is prohibited. Specifically, each use of keyword advertising with the brands and terms listed in section 3.7 of this Agreement, including product descriptions and related keywords, including plausible typo variants of the terms, is prohibited. This particularly applies to the booking of the keywords.

- 3.9 The advertising of the OUTLETCITY Online Offering in or via layer and banner networks, such as in Klamm-Lose or paid email marketing, paid banners and/or paid click programmes is prohibited.
- 3.10 The use of “forced clicks” (click forcing practices) is also prohibited.
- 3.11 Advertising through the use of coupons and/or coupon codes from/for OUTLETCITY METZINGEN is only permitted when each coupon or coupon code in question was explicitly authorised for the Affiliate Programme and provided to the Publisher through AWIN by OUTLETCITY METZINGEN.
- 3.12 The Publisher may not include prices in its advertising for products offered by OUTLETCITY METZINGEN, whether in the form of textual content or screenshots, or otherwise advertise such products by reference to their prices.
- 3.13 The Publisher shall ensure that the presentation for the OUTLETCITY Online Offering and the integration of its advertising materials into the Publisher’s Website are lawful and do not infringe any third-party rights. OUTLETCITY METZINGEN shall not be held responsible in either case. Accordingly, OUTLETCITY METZINGEN shall not review in advance either the presentation of, or the integration of, advertising for the OUTLETCITY Online Offering.
- 3.14 Where OUTLETCITY METZINGEN provides instructions concerning the technical integration or maintenance of the advertising materials, the Publisher shall comply with such instructions without exception.

#### **4. Rights of Use**

- 4.1 OUTLETCITY METZINGEN grants the Publisher solely such non-exclusive, non-transferable, and revocable rights as are necessary, and only for so long as they are necessary, for the Publisher to promote the OUTLETCITY Online Offering in accordance with this Agreement using the advertising materials made available to the Publisher.
- 4.2 OUTLETCITY METZINGEN does not grant the Publisher any rights beyond the foregoing. The granted rights shall terminate no later than upon termination of the contractual relationship between the Publisher and OUTLETCITY METZINGEN or AWIN.

- 4.3 The Publisher is not permitted to list OUTLETCITY METZINGEN as a reference without express written permission and is not permitted to advertise its contractual relationship with OUTLETCITY METZINGEN in any other way.

## **5. Commission**

- 5.1 The commission model for Publishers consists of two components. The Publisher may receive a commission for sales (each a “Sale”) and for new customer registrations in the OUTLETCITY CLUB (each a “Lead”).
- 5.2 To enable the attribution of commission to the respective Publisher, cookies with a lifespan of 30 calendar days shall be set when a customer accesses the OUTLETCITY Online Offering via advertising materials integrated into the Publisher's Website. If, during the lifespan of a previously set cookie, the customer subsequently accesses the OUTLETCITY Online Offering through the advertising materials of another Publisher, the previously set cookie shall be replaced by the newly set cookie, and the lifespan of the previously set cookie shall end prematurely. If a customer registers as a new member of the OUTLETCITY CLUB during the lifespan of a cookie, the Publisher through whose advertising materials the customer accessed the OUTLETCITY Online Offering shall receive a one-time commission for that lead. The lead commission shall become due only upon expiry of the withdrawal period applicable to the validated registration of the customer account (i.e., following confirmation by OUTLETCITY of the registration through the double opt-in process).
- 5.3 A commission for sales shall become due only in respect of net sales and exclusively under the following conditions:
- (a) The Publisher shall be deemed to have generated a sale only if a customer, after accessing the OUTLETCITY Online Offering via advertising materials integrated into the Publisher's Website, purchases goods there within the lifespan of the respective cookie set.
  - (b) A Sale is first generated when the product is shipped to the customer and has been paid in full.
  - (c) A net sale shall only be deemed to have occurred upon expiry, without exercise of cancellation rights, of the withdrawal period or any longer return period specified by OUTLETCITY METZINGEN.
  - (d) Any taxes, voucher values, and shipping costs shall be deducted from the commission calculation base.

(e) The sale must not have been generated using an unauthorized voucher.

5.4 The respective commission rate for sales or leads generated by the Publisher shall be determined in accordance with the commission model set out in the “Overview” tab, as well as any individual agreements that may deviate therefrom between OUTLETCITY METZINGEN and the respective Publisher.

5.5 The respective commission model may be adjusted at any time in accordance with clauses 6.5 to 6.9 of AWIN’s General Terms and Conditions for Advertisers (“Advertiser T&Cs”), available at <https://www.awin.com/de/allgemeine-geschäftsbedingungen/programme-terms-and-conditions-2017>.

## **6. Term and Termination of the Participation Agreement**

6.1 OUTLETCITY METZINGEN and the Publisher shall conclude the Participation Agreement subject to the condition subsequent of the termination of the contractual relationships between the Publisher and AWIN, and between OUTLETCITY METZINGEN and AWIN.

6.2 Both OUTLETCITY METZINGEN and the Publisher may terminate the Participation Agreement at any time with a notice period of 14 calendar days.

6.3 The right to extraordinary termination of the Participation Agreement remains unaffected.

6.4 Termination of the Participation Agreement must be given in writing. Notice of termination by email shall satisfy the written form requirement.

## **7. Indemnification Against Third-Party Claims**

7.1 The Publisher shall indemnify and hold harmless OUTLETCITY METZINGEN from and against any and all third-party claims arising from the Publisher’s culpable breach of these Terms of Participation or applicable law in connection with the promotion of the OUTLETCITY Online Offering.

7.2 If the defence against third-party claims becomes necessary, the Publisher shall provide OUTLETCITY METZINGEN with all reasonable assistance in such defense. Such assistance may consist, for example, of providing information or furnishing statements (including, without limitation, sworn affidavits).

## **8. Final Provisions**

- 8.1 The Publisher's general terms and conditions shall not apply in the contractual relationship with OUTLETCITY METZINGEN.
- 8.2 If these Terms of Participation conflict with the AWIN Terms and Conditions, the Advertiser T&Cs, each as amended from time to time and applicable at the relevant time, or with any other agreements between AWIN and OUTLETCITY METZINGEN or the Publisher, the provisions of the AWIN terms and conditions and the Advertiser T&Cs shall prevail over these Terms of Participation.
- 8.3 These Terms of Participation shall be governed by the laws of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the rules of private international law (conflict of laws). To the extent permitted by law, the exclusive place of jurisdiction for any disputes between OUTLETCITY METZINGEN and the Publisher shall be Metzingen.
- 8.4 Should any provision of these Terms of Participation be or become wholly or partially void or unenforceable, or should these Terms of Participation contain any gaps, the validity of the remaining provisions shall remain unaffected.