

# **Conditions of participation of the Partner program of C&A Mode GmbH & Co. KG**

Booth: 23.06.2018

## **§ 1 Scope of application**

1. These General Terms and Conditions (hereinafter: "GTC") apply to participation in an affiliate network or Partner program (hereinafter: "C&A Partner Program") between C&A Mode GmbH & Co. KG, Wanheimer Straße 70, 40468 Düsseldorf (hereinafter referred to as "C&A") or the agencies that set up and/or administer Partner programs for C&A (hereinafter referred to as "Agency") and the Partners of the C&A Partner program (hereinafter referred to as "Partner"), which C&A operates via a sales platform (hereinafter referred to as "Network") of its choice or has operated by an Agency.
2. The Partner's own terms and conditions of business require the express written consent of C&A and shall not apply even if C&A does not contradict their validity.

## **§ 2 Subject matter of the contract**

1. The subject matter of these GTC is the participation of the respective Partner in the C&A Partner Program. The C&A Partner Program enables the placement of electronic C&A advertising, e.g. advertising banners, text links, product recommendations, etc. to be released by C&A on an online advertising medium of the Partner in individual cases.
2. For the successful brokerage of transactions (e.g. leads, sales), the Partner receives a performance-related reimbursement of advertising costs resulting from the Commission rates set by C&A or the Agency for the respective C&A Partner Program (hereinafter referred to as "C"), the amount of which depends on the respective service provided. In addition to the purchase of goods from C&A ("Sale"), transactions can also be a click or view of an advertising material, ordering the C&A newsletter ("Lead"), or similar. Remunerable transactions are specified in the Network descriptions.
3. In addition to these GTC, the General Terms and Conditions of the respective affiliate Network (hereinafter referred to as "Network GTC") valid at the time the contract is concluded and agreed between the Partner and the Network shall apply. If the Network GTC contain regulations that contradict these conditions, only these GTC apply.

## **§ 3 Conclusion of contract**

1. Unless expressly agreed otherwise, Partners apply via the application procedure of the respective Network. For the application procedure itself, the respective Network GTC apply.
2. C&A and the Agency reserve the right to refuse applications if the contents of the Partner advertising media do not comply with C&A objectives. The Partner is not entitled to conclude a contract with C&A or the Agency.
3. The contract becomes effective as soon as C&A or the Agency has agreed to the Partner's application and the Partner has been informed by e-mail.

4. If the Partner operates several websites (domains) and would also like to participate in the C&A Partner Program with these sites, the Partner is obliged to indicate these websites. The effective inclusion of these domains in the C&A Partner Program requires explicit confirmation by C&A or the Agency and can be applied for by informal e-mail to C&A or the Agency. A new registration is not necessary. Approved domains are to be added by the Partner in his Partner account at the respective Network.
5. The C&A Partner Program is intended for Partners who refer end customers to C&A via their advertising media within the scope of the C&A Partner Program. Commercial resellers who place orders with C&A to sell to end customers are excluded from the C&A Partner Program. Participation as a Partner with the intention of resale to end customers is only permitted with the prior written consent of C&A.

#### **§ 4 Rights and Obligations of C&A and/or the Agency**

1. C&A monitors and records the transactions in accordance with § 8 of these GTC. Subject to the provisions of § 5(3), C&A undertakes to reimburse the advertising costs in accordance with the parameters stored in the C&A Partner Program. C&A is free to change the parameters with effect for the future.
2. Upon admission to the C&A Partner Program, the Partner will receive a reference that enables to link between the Partner's advertising medium and the C&A website to access C&A via the Partner site visitor. The reference can be made to various areas of C&A's website. After admission to the C&A Partner Program, C&A or the Agency provide the Partner with a selection of advertising materials. In addition to advertising materials, C&A or the Agency provide the Partner with product data in XML and CSV formats as required within the C&A Partner Program. Individual advertising material or special formats can be requested at any time from C&A or the Agency. However, there is no obligation of C&A to make such special formats available.
3. The formats and design guidelines for the advertising media are defined solely by C&A.
4. In individual cases, C&A or the Agency may require the Partner to remove certain contents even outside the update cycles of the product data. The Partners have to execute the removal immediately. The Partner must immediately notify C&A by e-mail of the completion of the removal.

#### **§ 5 General rights and obligations of the Partner**

1. The Partner is responsible for the operation and maintenance of its advertising media as well as for all content and their topicality.
2. The Partner is responsible for the proper integration of C&A advertising. Subject to § 4(4) the Partner decides independently on the duration of the integration of C&A advertising and is entitled to remove the C&A advertising at any time. The Partner must ensure that only current electronic advertising from C&A integrated on his advertising media and undertakes to remove electronic advertising from C&A from advertising media immediately if C&A or the Agency has requested its removal. After termination of this agreement, the Partner is obliged to remove all C&A advertising material from its advertising media without being prompted (at the latest within 24 hours after termination). There is no right of retention in this respect, unless the claim has been legally established or acknowledged by C&A. If requested by C&A, the Partner must confirm the deletion of the advertising material in writing.
3. A claim of the Partner for Commission arises only under the condition that during the contract term a transaction of an end customer with C&A occurs on the basis of the

advertising activity of the Partner, which was logged and confirmed by C&A and by the Partner according to § 8, given that there is no abuse in the sense of § 6.

4. The Partner undertakes not to provide content in any form, in particular not by its advertising media themselves or by websites linked to its advertising media, which violates applicable law (e.g. criminal, competition and youth protection law), the rights of third parties (e.g. name, trademark, patent, copyright and personal rights) or morality. This includes in particular the depiction of violence, sexually suggestive images and discriminatory, offensive or defamatory statements regarding race, sex, religion, nationality, disability, sexual orientation or age.
5. A website operated or used by the Partner must have a complete, easily recognizable, immediately accessible and permanently available provider identification (imprint).
6. The Partner undertakes not to pay the Commission paid by C&A
  - To pass on to end customers completely or not only partially.
  - In addition to the direct route to the end customer, Commission passing on is also possible in indirect form through third parties or in the form of contributions in kind or virtual goods. The operation of a business model of the Partner that fulfils the above requirements requires the express written consent of C&A. In the event of a violation of this prohibition, Commissions already paid shall be refunded in accordance with § 7(2).
7. The Partner may only advertise vouchers that C&A has explicitly issued for
  - Partners have been released and/or communicated via the Partner newsletter
  - The advertising of other vouchers, for example from end customer newsletters, print advertisements or customer service contacts is not allowed.
  - In addition, the Partner must comply with the following conditions when applying for vouchers and temporary promotions: Only currently valid vouchers that can be redeemed at C&A may be advertised. Expired vouchers must be removed immediately and may not be listed, even if they are marked accordingly. Sales promotions, special offers or other forwarding to the C&A website must be clearly separated from voucher codes in the communication. Vouchers that are explicitly made available exclusively to a Partner may not be advertised by other Partners. In the event of a violation, C&A reserves the right to take measures in accordance with § 7(2) of these GTC.
8. The Partner is only entitled to send e-mails with C&A advertising to third parties, if he has prior approval by C&A. He undertakes to send e-mails with C&A advertising only to those persons who have expressly consented to receive e-mails with advertising from C&A in advance. The Partner guarantees that the respective express consent can be proven and makes the respective evidence available to C&A if requested to do so. The Partner guarantees that the declaration of consent and the corresponding proof of this comply with the current legal requirements. The placement of C&A advertising in e-mails has to be identified as advertising in contrast to editorial content. If the Partner sends pure advertising e-mails without editorial content, these are to be marked as such in the subject line of the e-mails. In the event of a violation, C&A reserves the right to take measures in accordance with § 7(1) of these GTC.
9. If the Partner works with product data of C&A, he commits himself to import daily updated product data extracts, to update their advertising surfaces and to guarantee the topicality of the advertised C&A products, in particular the price information. The Partner is prohibited to change product data, in particular price and shipping cost information.
10. Database copies of C&A product data may only be used for linking to C&A. It is therefore prohibited to link to other websites, especially to competitors of C&A. In addition, it is forbidden to change links from the database extract.
11. The Partner is not entitled to make legally binding declarations to third parties for C&A and/or the Agency or to give the impression that he is entitled to do so.

## § 6 Prohibition of abuse by the Partner

The Partner is prohibited from any form of abuse in the form of the achievement of compensation-relevant events by unfair methods or inadmissible means which violate applicable law or these subscriber conditions. In connection with advertising space and advertising activities, the Partner is in particular not entitled:

- To set up websites, advertisements (e.g. AdCopy) or similar, which cause a risk of confusion with the C&A website. The Partner is not allowed to mirror the website of C&A, nor to adopt graphics, texts or other contents of the website of C&A. In particular, the impression must be avoided that the Partner website is a C&A project or that its operator is economically connected with C&A in a way that goes beyond the C&A Partner Program and this contract. Any use of materials or contents from the C&A website as well as their logos, brands or other characteristics by the Partner beyond the rights of use under § 9 of these GTC requires prior written approval by C&A.
- To register, operate or use domains in which character strings of trademarks and/or product names protected by C&A, in particular the term "C&A", are identical or capable of being confused (e.g. by phonetic similarity or by character similarity due to the mere omission or addition of individual letters or numbers in the term "C&A"). Direct forwarding of the Partner's advertising media to the C&A website is prohibited, i.e. the Partner's advertising media may not be directly linked to the C&A website as a transit station.
- To book as search terms in the area of search engine marketing (e.g. Google AdWords or BingAds) terms which are protected as trademarks of C&A, especially the name "C&A" or "cunda.de", identical or confusingly (e.g. by phonetic similarity or by character similarity due to the mere omission or addition of individual letters or numbers to the term "C&A"), and to display them in any form. This applies to all areas of the ad (e.g. the terms "C&A" or "cunda.de" in the ad text, in the title of the ad as well as in the sitelinks and one-line sitelinks). The Partner is obliged to ensure (for example by blocking the search terms using the "exclusive keyword" function in Google AdWords) that terms protected as trademarks of C&A do not appear in combination with other terms in search queries. The Partner is not permitted to place advertisements that contain a C&A protected brand and/or product name including possible misspellings and combinations as a visible link. The Partner is obliged to ensure that his offers do not appear on Google Shopping. Direct redirects from the Google ad to the C&A website are also prohibited.
- To use forms of advertising such as iFrames, pop-ups, pop-unders and layers or to set up so-called click farms, click spamming or DDOS attacks. The integration of C&A advertising materials on banner lists and advertising media of the Partner with click request/click compulsion (e.g. paid mailing, SMS dispatch, forced clicks) is also prohibited. The technology postview tracking, which loads C&A advertising material and sets a C&A cookie on the client to be referred without the client's participation, is only permitted with the prior written consent of C&A. The use of postview tracking also requires written approval by C&A and the written consent of the Partner to the current C&A postview guidelines. The Partner assures to set cookies only if and insofar as an official C&A advertising medium is used, the advertising medium is visible to the customer and a voluntary and conscious click precedes the generation of the cookie.
- Use electronic notes using adware and browser plug-ins (including add-ons for Firefox, Google Chrome, etc.). The use of the "C&A" brand for the advertising of such tools is already prohibited.
- Itself or through third parties, by using the advertising material, tracking links and/or other technical aids provided, causes or causes transactions or otherwise fraudulently pretends to cause transactions.

- to use forms of advertising that enable tracking but do not display the advertising material, not perceptible or not in the prescribed form.

## **§ 7 Contractual Penalty, Reimbursement of Remuneration Claims and Blocking**

1. In each case of culpable violation of one of the provisions of § 5(8), § 6 of these GTC, the Partner undertakes to pay C&A an amount equal to one monthly turnover of the Partner, calculated according to the average turnover of the Partner in connection with participation in the C&A Partner Program of the previous three months, but at least EUR 2,500.00 but not more than EUR 10,000.00. Further claims remain expressly unaffected by the assertion of the contractual penalty.
2. In accordance with § 5(3) a Commission claim does not arise, if the transaction results from a culpable offence against the obligations from § 6 of these AGB. In this case or in case of culpable violation of § 5(7), C&A or the Agency are to be reimbursed immediately for Commissions already paid out.
3. In case of culpable violations of § 5 and § 6 of these GTC, C&A or the Agency reserves the right to block the Partner account immediately. The right to ordinary or extraordinary termination in accordance with § 14 remains unaffected by this.

## **§ 8 Tracking, transactions and Commission**

1. All activities of the Partner are logged via the tracking tool to be determined by C&A or the Agency and made available by means of statistics. The Partner's brokered transactions and the resulting net revenues form the basis for the Partner Commission to be distributed, which depends on the scope and real value of the service. Net sales include orders which, after delivery, have been retained and paid for in full or in part by the customer. Net sales do not include shipping costs paid by the customer, VAT, all optional C&A service charges or orders for the Partner's own use.
2. The Partner is entitled to a Commission on transactions, which were mediated by the active application of C&A via the advertising space registered in the C&A Partner Program within the first session and the following 30 days. The prerequisite for this is that the referred customer accepts cookies and can be identified by C&A via this cookie.
3. The Commission payment is made by the respective Network in its payment cycle. The current Commission rates can be found in the Partner information of the respective Network and are not the subject of these GTC. The Partner is not entitled to reimbursement of advertising costs for brokerage via unregistered or unauthorized advertising space.
4. C&A or the Agency is responsible for the entire processing of the brokered order and reserves the right to reject orders at its own discretion, e.g. in the event of a negative credit rating.

## **§ 9 Rights of use**

The Partner receives a non-exclusive, non-transferable and revocable right to use the advertising material and product data provided, but only within the framework of this C&A Partner Program and the agreements stipulated therein. The Partner may not modify the licensed materials. C&A grants itself and/or the Agency the right to revoke the license granted at any time by written notification by e-mail without stating a reason. The granting of licenses ends at the latest upon termination of this contract, without the need for a separate declaration to this effect.

## **§ 10 Liability and Warranty**

1. The provision of advertising material and product data shall be made within the scope of the available technical possibilities. There is no claim to error-free and uninterrupted availability of the C&A website.
2. Unlimited liability: C&A is only liable without limitation in cases of intent or gross negligence. In case of slight negligence, C&A is liable for injury to life, body and health.
3. Limitation of liability: In case of slight negligence, C&A is liable for breach of essential contractual obligations limited to the amount of the contract-typically foreseeable damage. Essential contractual obligations are those, which grant the contractual parties the rights, which the contract has to grant according to its content and purpose, in particular the obligations the fulfilment of which is essential for the proper execution of the contract and on whose compliance the contractual Partner regularly relies and may rely (cardinal obligations).
4. The above limitation of liability also applies to the personal liability of employees, representatives and bodies of C&A.

## **§ 11 Exemption**

The Partner undertakes to indemnify C&A against any and all claims and defence costs arising from the operation of its advertising media, in particular from a breach of its obligations under § 5 and § 6. In addition, the Partner is obliged to support C&A in its defense against such claims by making declarations and providing information.

## **§ 12 Confidentiality**

1. The parties assure that all information and data, in particular the provisions of this agreement, business and financial information, customer and seller lists, price and sales information and evaluation material provided by C&A will be treated confidentially and kept confidential. Direct or indirect disclosure of such information to third parties is prohibited, unless such disclosure is necessary due to official instructions and/or statutory provisions. Third parties are not the service providers Commissioned by C&A to handle the C&A Partner Program. The Partner shall also oblige such third parties to maintain the confidentiality of confidential information for the duration during and even after termination of their activities.
2. Press releases concerning the cooperation based on this agreement must be agreed with C&A and require the written consent of C&A before publication.
3. The duty of confidentiality is valid for an unlimited period beyond the duration of this contract.

## **§ 13 Independence of the contracting parties**

C&A and the Partner are independent parties and operate their advertising spaces and websites independently of each other. This agreement does not create a joint company or community, and no employment or trading relationship or Agency contract. Neither the Partner nor C&A are entitled, to act on behalf of the other Partners and/or to make declarations on their behalf.

## **§ 14 Duration of contract and termination**

1. The contract is concluded for an indefinite period of time and can be terminated at any time by one of the contracting parties in writing by e-mail or letter with one day's notice. The right to extraordinary termination without notice for good cause remains unaffected by this.
2. an important reason for C&A exists in particular if
  - a) the Partner grossly violates his obligations under § 5 of these GTC or, in the case of less serious breaches of contract, does not cease the conduct complained of despite appropriate information;
  - b) C&A is sued by third parties for alleged infringements in connection with the advertising activity of the Partner.

## **§ 15 Final Provisions**

1. This contract is construed and governed by German law, excluding all international (contractual) legal systems, in particular international private law (UN Sales Convention - CISG).
2. Exclusive place of jurisdiction is Düsseldorf. C&A also reserves the right to sue at the place of jurisdiction of the Partner.
3. C&A has the right to amend individual provisions of this Agreement at any time. The Partners will be informed in advance by e-mail. The Partner may object to the amendment in writing within 14 days. If no objection is received by C&A within this period, the changes are deemed accepted by the Partner and become an integral part of the contract. C&A and/or the Agency will separately point out the possibility of objection and the significance of the 14-day period. The right of the Partner to terminate the contract due to the change remains unaffected by this.
4. These GTC are not transferable without our written consent. C&A is entitled to transfer its rights and obligations under this agreement to companies in which C&A or one of its shareholders holds direct or indirect interests, or to assign rights under this agreement to them.
5. There are no verbal side agreements. Amendments and supplements to the contract must be made in writing. Electronic documents in text form do not meet the written form requirement.
6. Should one or more provisions of these GTC be invalid, this shall not result in the invalidity of the entire contract. The invalid provision shall be replaced by the relevant statutory provision.