



GENERAL TERMS AND CONDITIONS OF AVALON X MEDIA GMBH

Company: Avalon X Media GmbH

Schozacherstr. 40, 70437 Stuttgart, Germany

Managing Director: Denys Tarasenko

Email: service@avalonxmedia.com

Commercial Register: Amtsgericht Stuttgart, HRB 800227

VAT ID: DE455830727

§ 1 Scope and Roles

1.1 Business Model and Roles. Avalon X Media may procure datasets (including, without limitation, addresses, co-registration data and comparable records, collectively “Data”) from a third-party owner or provider (“**Lessor**”) and make such Data available to the Customer in its own name and commercial interest as an **intermediate lessor**. The Customer acts as the **final lessee**.

1.2 Customer’s Responsibility for Use. After delivery, the Customer bears sole responsibility for the lawful use, storage and further processing of the Data. Avalon X Media assumes no responsibility for the Customer’s intended use (including compliance with competition, consumer protection and privacy laws). The Customer shall indemnify and hold harmless both the Lessor and Avalon X Media against any third-party claims arising from the Customer’s unlawful or improper use of the Data.

1.3 Conflicting Terms. Customer terms and conditions that deviate from or conflict with these GTCs do not apply unless Avalon X Media expressly agrees in writing. Individual written agreements (e.g., an Insertion Order, “IO”) prevail over these GTCs for the commercial parameters stated therein; the GTCs govern all remaining legal and operational aspects.

1.4 B2B Only. These GTCs apply solely to entrepreneurs as defined in § 14 BGB. They do not apply to contracts with consumers.

§ 2 Contract Formation

2.1 Offer and Acceptance. Offers, quotes and availability indications by Avalon X Media are non-binding. A contract is formed only upon Avalon X Media’s written order confirmation or by the commencement of performance.

2.2 Time Commitments. Delivery dates and deadlines are binding only if expressly designated in writing as binding. Otherwise, dates are estimates.

2.3 Changes and Additions. Any change to scope, quantities or delivery mode requires written confirmation by Avalon X Media.

§ 3 Prices and Payment

3.1 Price Basis. Remuneration is based on individual written agreement (e.g., the IO). If no individual prices are agreed, Avalon X Media’s then-current price list applies.

3.2 Price List Adjustments. If performance occurs more than four (4) months after contract formation and prices refer to a price list, the price list valid at the time of performance applies (less any fixed or percentage discounts confirmed in writing).

3.3 VAT. All amounts are net and exclusive of the applicable statutory VAT.

3.4 Due Date; Default. Unless agreed otherwise in writing, invoices become due upon delivery/performance and invoicing, without deductions. If payment is more than four (4) weeks overdue, (i) all early-payment discounts or special reductions lapse and (ii)

Avalon X Media may suspend further services (including those under other contracts) until full payment.

3.5 Prepayment / Security. Where, after contract formation, circumstances arise that materially impair the Customer's creditworthiness or jeopardize payment, Avalon X Media may require prepayment or adequate security and may withhold performance until provided.

§ 4 Set-Off, Retention, Assignment by Customer

4.1 Set-Off / Retention. The Customer may set off only with claims that are undisputed or established by a final court judgment. A right of retention exists solely for claims arising from the same contractual relationship.

4.2 No Assignment Without Consent. The Customer may not assign rights or claims under the contract to third parties without Avalon X Media's prior written consent.

§ 5 Assignment of Claims (Factoring)

5.1 Right to Assign. Avalon X Media may assign receivables from the contractual relationship at any time (e.g., to a factoring company or collection agency).

5.2 Debt-Discharging Payment. After notice of assignment, payments with debt-discharging effect may be made only to the designated assignee and in accordance with the instructions provided.

§ 6 Warranty

6.1 Authority to Commit. Employees or representatives of Avalon X Media are not authorized to make binding commitments regarding scope or quality of services unless confirmed in writing by management.

6.2 Subsequent Performance; Withholding. Avalon X Media's obligation to remedy defects (e.g., correction or replacement) arises only once the Customer has paid the

due remuneration. The Customer may withhold only that portion of the price proportionate to an asserted defect for which Avalon X Media is actually under a statutory warranty obligation.

6.3 Limitation Period. Claims for defects become time-barred twelve (12) months after delivery of the service, or—if acceptance is required—twelve (12) months after acceptance. Statutory limitation periods apply to claims for damages where mandatory.

§ 7 Liability

7.1 Intent and Gross Negligence. Avalon X Media is liable without limitation for damages caused by intent or gross negligence, including by its legal representatives or vicarious agents.

7.2 Slight Negligence; Core Duties. For damages caused by slight negligence in breaching a material contractual duty (one whose performance is essential for proper fulfilment and on which the Customer regularly relies), liability is limited to foreseeable damage typical for this type of contract. Any further liability is excluded.

7.3 Mandatory Liability. Liability for injury to life, body or health, liability under the German Product Liability Act, and liability based on explicitly granted guarantees remains unaffected.

7.4 Shorter Limitation. Claims for damages that are not related to injury to life, body or health—and where slight negligence is not excluded—become time-barred one (1) year from accrual.

7.5 Customer's Use; Indemnity. Avalon X Media is not liable for the Customer's use of delivered services or Data. The Customer bears sole responsibility for ensuring that any use, storage or further processing complies with applicable law (including, but not limited to, data protection and competition law) and shall indemnify Avalon X Media from third-party claims arising therefrom.

§ 8 Special Terms for Data Leasing

8.1 Subject Matter

8.1.1 Intermediated Leasing. Avalon X Media (as **intermediate lessor**) procures Data from a Lessor and subleases it to the Customer (the **final lessee**) in Avalon X Media's own name and commercial interest.

8.1.2 Contractual Parties. The data lease contract is concluded exclusively between Avalon X Media and the Customer. No direct contractual relationship arises between the Customer and the Lessor.

8.1.3 Conditional Confirmations. Where required inputs (e.g., advertising materials, technical setup, processors) are not yet available at the time of order confirmation, Avalon X Media may issue a conditional confirmation.

8.1.4 No Permissibility Assurance for Use. Avalon X Media does not assume liability for the legal permissibility of the Customer's intended use of the Data (in particular under unfair competition or consumer protection laws). The Customer is solely responsible and shall indemnify both the Lessor and Avalon X Media from related third-party claims.

8.1.5 Delivery Method. Data is delivered via the interface/method agreed in the order (e.g., API, SFTP, secure email). Delivery may be executed directly by the Lessor on behalf of Avalon X Media or by Avalon X Media.

8.2 Remuneration

8.2.1 Net; Variances. Prices are net of VAT. Each data group delivered is invoiced separately. Volumes stated in offers/price lists are estimates subject to regular fluctuations. Industry-standard deviations of up to five percent ($\pm 5\%$) from the agreed volume are deemed permissible; the price adjusts accordingly unless such deviation is unreasonable for either party in the specific case.

8.2.2 Ancillary Costs. Selections, segmentation, formatting, transfer and comparable ancillary services are charged separately.

8.2.3 Multiple Defaults. If the Customer is in default on more than one payment obligation, all outstanding amounts owed to Avalon X Media become immediately due.

8.3 Accuracy; Allocation of Risk

8.3.1 No Liability for Lessor Statements; Assignment. Avalon X Media is not liable for the accuracy or completeness of information provided by the Lessor. To the extent legally permissible, Avalon X Media assigns potential warranty/accuracy claims against the Lessor to the Customer, who accepts such assignment.

8.3.2 Compliance Review by Customer. The Customer must verify that intended use of the Data complies with applicable privacy and competition laws. Avalon X Media assumes no liability for such compliance.

8.3.3 Mandatory carve-outs. The exclusions above do not apply in cases of intent or gross negligence by Avalon X Media, breaches of material contractual duties, or injury to life, body or health. The same applies to acts of Avalon X Media's legal representatives or vicarious agents.

8.4 Right to Use; Controls

8.4.1 Single Use Unless Agreed Otherwise. Unless expressly agreed otherwise in writing, the Customer is entitled to **one-time** use of the delivered Data for the agreed purpose after payment and release. Any further or repeated use, any resale or disclosure to third parties beyond the agreed purpose is prohibited.

8.4.2 Permitted Processing Steps. Absent separate written consent, the Customer may only perform the following technical steps (or have them performed by authorized processors): (i) conversion/analysis/supplementation/qualification; (ii) screening (e.g., scoring, fraud checks); (iii) deduplication; (iv) splitting into subsets and volume reduction.

8.4.3 Additional Processing Requires Consent. Optimization analyses, historical or order-entry storage, temporary storage beyond three (3) months after last delivery, or forwarding to other providers require Avalon X Media's prior written consent.

8.4.4 Use Restrictions. The Customer must not store, modify or transfer the Data outside the agreed authorization. Special requirements and individual restrictions (e.g., approved advertising materials, timing, channels) must be observed.

8.4.5 Processors and Sub-processors. Further processing may be carried out only at data centers or by processors approved in advance by Avalon X Media. Processors

must be qualified under GDPR/BDSG. Any subcontracting by such processors requires prior written consent by Avalon X Media. A valid data processing agreement pursuant to Art. 28 GDPR must be in place and provided to Avalon X Media within five (5) business days upon request.

8.4.6 Control Records (Seeds). To detect unauthorized use, the Lessor (or Avalon X Media) may insert up to fifty (50) control records (“**seeds**”) per data group in each delivery, regardless of total volume.

8.4.7 Downstream Notice and Liability. If the Customer forwards Data to service providers (e.g., mailing vendors) within the permitted scope, it must inform them of the presence of seeds and applicable restrictions. The Customer is liable for any breach by its engaged companies.

8.5 Contractual Penalty

8.5.1 Trigger and Amount. For each breach of agreed use restrictions, the Customer shall pay a contractual penalty equal to **ten (10) times** the agreed fee calculated on the gross volume of the delivered data group that also contained the records used in breach. This does not limit Avalon X Media’s right to claim further damages.

8.5.2 Proof of Breach. It is sufficient evidence of breach to demonstrate that the Customer (or its third-party provider) contacted **one** seed from the delivered inventory, unless the Customer proves lawful receipt of that seed without breaching contractual obligations toward the Lessor or Avalon X Media.

8.6 Termination; Consequences

8.6.1 Ordinary Termination. Either party may terminate a data lease on one (1) month’s notice to the end of a calendar month. Data delivered by the effective termination date remains payable in full, irrespective of use.

8.6.2 Extraordinary Termination. The right to terminate for good cause remains unaffected.

8.6.3 Compliance Suspension / Termination. Avalon X Media may refuse performance while statutory requirements for proper data processing/use are not fulfilled or demonstrated by the Customer. If the Customer fails to comply within a reasonable cure period, Avalon X Media may terminate without notice.

8.6.4 Payment Suspension. Avalon X Media may suspend further deliveries or services until all outstanding payment obligations are fully settled.

§ 9 Special Conditions for Email Marketing

9.1 Subject Matter

9.1.1 Service Description. To support the Customer's market communication, Avalon X Media may conduct direct email marketing campaigns ("Campaigns") on behalf of the Customer.

9.1.2 Third-Party Tools. Avalon X Media may perform services itself or via third parties (e.g., ESPs, technical partners).

9.1.3 Recipient Data. Unless agreed otherwise, the Customer provides the recipient data. Where Avalon X Media provides its own data, the terms are set out separately in the IO.

9.1.4 Content and Targeting. Campaign content and target group definition are determined by the Customer and confirmed in writing (e.g., order confirmation/IO).

9.1.5 Scope Limits. Unless expressly agreed, analysis of target group structure/behavior and marketing strategy consulting are not part of the service.

9.2 Customer Responsibilities

9.2.1 Compliance. The Customer ensures compliance with all applicable national/international laws in the recipient country, including GDPR/ePrivacy/UWG. In particular, the Customer shall ensure: valid consent for each recipient (including any analytics where required), clear sender identification with legally required notice (impressum/legal disclosure), proper information on withdrawal of consent, and no tracking beyond what is permitted by law.

9.2.2 Cooperation and Data Quality. The Customer shall provide timely cooperation and supply data in suitable format/quality.

9.2.3 Incident Reporting and Cost Allocation. Faults must be reported without undue delay with a description enabling reproduction. If investigation shows the issue lies outside Avalon X Media's responsibility, Avalon X Media may charge reasonable review fees at the applicable rates.

9.2.4 Content Risk; Indemnity. The Customer is solely responsible for all materials it provides or recommends (logos, copy, products, links, sources) and warrants they are lawful and free of third-party rights. The Customer shall indemnify Avalon X Media against third-party claims (including necessary legal fees) arising from such content.

9.2.5 Blocking. Upon breaches of the above duties, Avalon X Media may block content or suspend services (temporarily or permanently). The Customer must compensate damages caused by its breach and indemnify against related third-party claims.

9.3 Data Protection Roles

9.3.1 Role Allocation by Scenario.

(a) **Customer Data Scenario:** If the Customer supplies the recipient data, the Customer is the **controller** (Art. 4(7) GDPR) and Avalon X Media acts as **processor** (Art. 4(8) GDPR). In this case, the parties shall conclude a data processing agreement under Art. 28 GDPR.

(b) **Avalon Data Scenario:** If Avalon X Media supplies the recipient data, Avalon X Media acts as a **controller** of such data; the Customer acts as a **separate controller** for any subsequent processing it performs.

9.3.2 General Compliance. Each party shall comply with its respective GDPR and applicable data protection obligations in all scenarios.

§ 10 Confidentiality; References

10.1 Confidential Information. The parties shall keep confidential the contents of their agreements and any trade or business secrets disclosed by the other party and shall not disclose them to third parties.

10.2 Exceptions. Confidentiality does not apply to information that is public, lawfully received from a third party without a duty of confidentiality, or must be disclosed by law or by order of a competent authority.

10.3 Reference Use. Avalon X Media may identify the Customer by name and logo as a reference in its website and marketing materials. The Customer may object at any time by written notice, in which case Avalon X Media will refrain from future use within a reasonable period.

§ 11 Final Provisions

11.1 Place of Performance. The place of performance for all obligations is Stuttgart, Germany.

11.2 Governing Law. These GTCs and all related contractual relationships are governed exclusively by the laws of the Federal Republic of Germany. The UN Sales Convention (CISG) does not apply.

11.3 Jurisdiction. If both parties are merchants, legal entities under public law or public special funds, the courts of Stuttgart have exclusive jurisdiction. Avalon X Media may also bring claims at the Customer's general place of jurisdiction.

11.4 Severability and Gaps. If any provision is or becomes invalid or unenforceable, the remaining provisions remain in force. The parties will replace an invalid or unenforceable provision with one that most closely achieves the original commercial purpose. The same applies where the agreement inadvertently omits a necessary regulation.

11.5 Written Form; No Waiver. Amendments and supplements require written form (email suffices only where expressly allowed). Failure to enforce a right is not a waiver of that right.

11.6 Force Majeure. Neither party is liable for delays or failures due to events beyond its reasonable control (e.g., outages of third-party networks/ESPs, strikes, acts of authorities). Performance timelines are extended by the duration and impact of such events.

11.7 Survival. Clauses concerning confidentiality, IP, payment, liability/indemnity, data protection, audit/seeds, penalties, jurisdiction and governing law survive termination.