



## Kwanko General Terms & Conditions

### Contents

1. Parties .....	4
2. Introduction .....	4
3. Definitions .....	5
4. Purpose .....	5
5. Contractual documents.....	6
6. Opposability .....	6
7. Term – Entry into effect.....	6
8. Advertiser account .....	7
8.1 Opening an advertiser account.....	7
8.2 Access to the advertiser account .....	7
8.3 Security of the advertiser account.....	8
9. Prerequisites .....	8
9.1 Technical prerequisites .....	8
9.2 Test prerequisites .....	9
10. Services and ordering.....	9
11. Financial conditions .....	9
12. Modification of the advertiser’s website.....	11
13. Tracking.....	11
14. Validation period.....	12
15. Members network .....	12
16. Exclusivity.....	13
17. Collaboration.....	13
18. Guarantee .....	13
19. Third-party notification.....	14
20. Prejudice .....	14
21. Agreement regarding proof .....	14

22. Intellectual property of data and expertise .....	14
23. Commercial references .....	15
24. Personal data .....	15
25. Confidentiality .....	15
26. Legal and regulatory requirements.....	16
27. Suspension .....	16
28. Termination.....	16
28.1 Termination due to lack of traffic .....	16
28.2 Termination due to fault.....	16
28.2.1 Termination by the advertiser .....	17
28.2.2 Termination by Kwanko .....	17
29. Consequence of the rupture of these general terms and conditions upon membership programmes.....	17
30. Responsibility .....	18
30.1 Responsibility of Kwanko .....	18
30.2 Responsibility of the advertiser .....	18
31. Insurance.....	18
32. Force majeure .....	18
33. Good faith .....	19
34. Legal authorisations.....	19
35. Legal developments.....	19
36. Tolerance .....	19
37. Sincerity.....	19
38. Independence .....	20
39. Assignment of the general terms and conditions.....	20
40. Addendum.....	20
41. Headings.....	20
42. Invalidity.....	20
43. Entirety.....	21
44. Prescription.....	21
45. Persisting clauses .....	21
46. Domicile .....	21
47. Law .....	21
48. Jurisdiction .....	21
49. Signature .....	22



# 1. Parties

Kwanko, with capital of €78,456,46, registered in the Nanterre Trade and Companies Register under number 440 546 885, whose registered address is 60, boulevard du Maréchal Joffre 92340 Bourg-la-Reine, represented by Mr. François Bieber, as Chairman of the Board of Directors.

HEREINAFTER: "Kwanko"

PARTY OF THE FIRST PART

AND:

The company, with capital of \_\_\_\_\_ euros,  
Registered in the \_\_\_\_\_ Trade and Companies Register,  
Under number \_\_\_\_\_,  
Whose registered address is \_\_\_\_\_,  
Represented by \_\_\_\_\_  
As \_\_\_\_\_

HEREINAFTER the "Advertiser"

PARTY OF THE SECOND PART

# 2. Introduction

1. The advertiser publishes an Internet website from which it markets products and/or services.
2. The advertiser wishes to increase the traffic on its website and the number of commercial operations performed thereon.
3. To do so, it plans to use a membership programme.
4. Kwanko has tools to allow the advertiser to implement a membership programme.
5. To do so, Kwanko has an Internet platform by which the advertiser can organise its membership programme, accessible at the website <http://www.netaffiliation.com>.
6. The advertiser declares:
  - ✓ That it is aware of the conditions in which the platform and services offered by Kwanko operate;
  - ✓ That it has all the necessary information to consider whether the proposed platform meets its expectations, objectives and desired performance;
  - ✓ That it has sufficient competence to implement a membership programme;
  - ✓ That it has the necessary marketing and technical skills to use the platform in optimum conditions;
  - ✓ That it complies with the required technical requirements;
  - ✓ That it is fully aware that Kwanko acts only as a technical intermediary.

7. After negotiations, the parties have come together on the following basis.

### 3. Definitions

8. The terms below shall have the following meanings:

- “Membership”: marketing practice by which an advertiser sees its commercial offerings (products or services) broadcast to a sales force comprised of a network of Internet websites, the members;
- “Member”: physical person or legal entity publishing services or content online on the platform in order to present links directing to advertiser websites and receiving remuneration for same;
- “Advertiser”: physical person or legal entity publishing services or content online on the platform and offering a membership programme;
- “Order”: means any commitment made by the advertiser to Kwanko through the platform or by any other means including by email, fax or purchase order;
- “Post-click delay”: the period during which an event is recorded following a web user’s click on one of the elements of the advertiser’s membership programme;
- “Post-view delay”: the period during which an event is recorded following the display of an element of the advertiser’s membership programme.
- “Data”: data produced, used or processed in order to carry out the contractual services via Kwanko
- “Personal data”: all information related to a directly or indirectly identified or identifiable physical person, by reference to an identification number or several elements belonging to them;
- “Intellectual property rights”: any element protected by a provision of the Intellectual Property Code;
- “Event”: any event or any action that may invoke a right to remuneration to Kwanko and/or its members;
- “Web user”: physical person or legal entity connected to the Internet in order to perform operations, interactive or not, such as consulting Internet websites, exchanging information or performing legal actions such as purchasing products or services;
- “Platform”: Kwanko’s online service accessible at the URL address <http://www.netaffiliation.com>, for the definition, registration and distribution of membership programmes on behalf of advertisers. This online service includes software which records the number and nature of events performed between the members’ and advertisers’ websites;
- “Tracking”: set of technical elements to determine the path and actions of a web user on the network;

### 4. Purpose

9. The purpose of these general terms and conditions is to determine the conditions by which the advertiser may use Kwanko’s platform in order to implement a membership programme.

## 5. Contractual documents

10. The contractual documents binding the advertiser and Kwanko are, by decreasing order:

- These general terms and conditions;
- Any specific or special terms and conditions;
- Purchase orders;
- Statistics for the advertiser's membership programme on the latter's account;
- Information present on the platform;
- Exchanges of emails and information between Kwanko and the advertising regarding the performance of these general terms and conditions.

## 6. Opposability

11. These general terms and conditions may be opposed by the advertiser upon its acceptance thereof, in any form (paper or digital).

12. In all cases, on the date of creation of the advertiser's account, these general terms and conditions shall be deemed to have been read and accepted by the advertiser.

13. Kwanko reserves the right to make any modifications that it deems necessary and useful to these general terms and conditions.

14. Kwanko undertakes to inform the advertiser of any new general terms and conditions. Except under termination filed by the advertiser within a period of 30 (thirty) days from the provision of a new version of the general terms and conditions, they shall be opposable for the advertiser. Similarly, new general terms and conditions are fully opposable for the advertiser once it has used Kwanko's membership platform after the provision of new general terms and conditions.

15. The general terms and conditions displayed online on Kwanko's platform prevail over any version with a previous print date.

## 7. Term – Entry into effect

16. These general terms and conditions enter into effect from the signing hereof by the parties.

17. In case of signing on different dates, the latest date is considered the effective signing date of the general terms and conditions.

18. These general terms and conditions are agreed for an initial term of one (1) year from their entry into effect.

19. Upon the expiry of this initial term, these general terms and conditions shall be tacitly renewed for annual periods, except where waived by either party with a notice period of three (3) months before each expiry date, notified by registered letter with acknowledgement of receipt.

## 8. Advertiser account

### 8.1 Opening an advertiser account

20. Use of Kwanko's platform presupposes the advertiser having opened an account on the platform.

21. The advertiser account may be opened by the advertiser:

ARTICLE I. either online by the advertiser itself, according to the instructions and information displayed on Kwanko's membership platform;

ARTICLE II. or by Kwanko.

22. The procedure for opening an advertiser account has different stages.

23. Upon its registration, the advertiser must provide the information required by Kwanko. This information must be accurate and justifiable upon Kwanko's first request. This information must be updated by the advertiser.

24. The advertiser must indicate a valid email address at which to receive, in particular, an email confirming its registration, indicating its password as well as the email address for their advertiser account.

25. It is the advertiser's responsibility to ensure that it along has access to the email with this password.

26. The advertiser, who can change its password on Kwanko's membership platform at any time, is invited to do so the first time it connects to the platform, and to change it regularly.

27. The advertiser alone is responsible for the preservation and confidentiality of its password and therefore, any consequences from involuntarily disclosing it to anyone else.

28. Any use of the advertiser account using the password allocated to the advertiser or modified by it, is presumed to arise from it alone, which it expressly accepts.

29. No operation may be performed without this password or the email address for its advertiser account.

30. The password and email address for its advertiser account are personal and confidential.

31. The advertiser is obliged to notify Kwanko without delay, of any compromise of the confidentiality of its password or any use by a third party to its knowledge.

32. Upon receipt of this notification, Kwanko shall within a reasonable delay and within two (2) business days, delete the password allowing access to the advertiser account.

33. A new password shall then be notified to the advertiser by email.

### 8.2 Access to the advertiser account

34. Access to the advertiser account is only possible after identification of the advertiser using access codes: an email address corresponding to the advertiser account, and a password.

35. The advertiser account is normally accessible 24 hours a day, 7 days a week.

36. Kwanko reserves the right without notice or indemnity to temporarily or permanently close the advertiser account in order to perform an update, modifications or change to the operational methods, servers and access hours, among others.

37. Kwanko reserves the right to at any time add to or change its remote services and the advertiser account according to the development of the technology.

38. The advertiser must ensure the possibility of development of IT and transmission means at its disposal so that these means can be adapted to suit the developments of the advertiser account and remote services offered by Kwanko.

39. In case of interruption or impossibility of use of the advertiser account, the advertiser may contact Kwanko's customer services for information.

### 8.3 Security of the advertiser account

40. The advertiser account is an automated data processing system. Any misuse thereof is prohibited and may be sanctioned by law.

41. Kwanko shall make every effort in accordance with industry standards to secure the advertiser account with regard to the complexity of the Internet. It cannot guarantee absolute security.

42. The advertiser declares that it accepts the characteristics and limitations of the Internet. It declares that it is aware that data on the Internet is not necessarily protected, in particular against hijacking.

43. It declares that it is aware of the nature of the Internet, and in particular, its technical performance and response times for consulting, checking or transferring data.

44. The advertiser must inform Kwanko of any fault of the advertiser account.

## 9. Prerequisites

45. Use of Kwanko's platform and implementation of a membership programme involve prerequisites of different natures.

### 9.1 Technical prerequisites

46. The advertiser undertakes to provide to Kwanko all information and elements (including IT files containing hypertext links, images and codes) for the implementation of membership programmes via Kwanko's members network.

47. The advertiser undertakes to provide on its website, a “membership” heading under which it presents the programme implemented on the platform and a redirect link to the presentation page for this programme on the platform, this page published by Kwanko.

48. The advertiser shall also provide all necessary elements for the implementation of the membership programme on its website.

## 9.2 Test prerequisites

49. In order to provide a membership programme for an advertiser, Kwanko must carry out technical tests.

50. As part of these tests, Kwanko may carry out one or more purchases on the advertiser’s website. Upon validation of this test purchase by Kwanko, the advertiser agrees to cancel this purchase, as soon as this cancellation is technically possible, and therefore, not to charge the price to Kwanko or send it a package of the object of the purchase.

51. In the event that such cancellation is not performed by the advertiser and/or the price of the purchase is debited to Kwanko’s account, the amount of this purchase price shall be billed to the advertiser by Kwanko and the package returned to the advertiser at its expense.

## 10. Services and ordering

52. The services offered by Kwanko in relation to membership are presented to the advertiser on Kwanko’s platform.

53. The advertiser selects the services most appropriate to its promotional objectives.

54. The advertiser is bound by the agreements in the services it has selected and ordered.

55. In relation to a contract in electronic form, exemption is expressly made for the provisions of article 1369-5 and 1-5 of Article 1369-4 of the Civil Code.

## 11. Financial conditions

56. The terms and conditions for remuneration of members through the membership programme provided by Kwanko are defined on the platform.

57. Kwanko ensures the settlement of amounts due to members.

58. Amounts due to members through the membership programme provided on the platform are assessed through data recorded by Kwanko (hereafter the “data” or “statistics”).

59. The platform records each event occurring via the membership programme. The parties expressly agree that records made by the platform serve as the basis for calculation of events.

Therefore, records made by Kwanko serve as the basis for establishing data for the billing of sums due from the advertiser to the members and to Kwanko.

60. Kwanko is therefore solely responsible for the recording of those events. The advertiser acknowledges and accepts that the statistics established by Kwanko are authentic and shall be used as official, definitive data between the parties.

61. The amount of remuneration payable by the advertiser includes remuneration of members in relation to the membership programme registered on the platform as well as remuneration to Kwanko.

62. In order to be able to benefit from Kwanko's services and in particular to allow remuneration of members, the advertiser must always keep its account credited with the minimum amounts defined in advance in contract with Kwanko.

63. No contractual commitment may be opposed against Kwanko once the advertiser account is not kept in credit by the minimum amount defined in contract.

64. Kwanko may however authorise a maximum outstanding balance on an advertiser account and as a result, readjust the amount of the permanent advance set in advance between the parties, without having to inform it.

65. As far as needed, the advertiser acknowledges and accepts that Kwanko applies a post-view delay of one (1) day and a post-click delay of thirty (30) days.

66. Kwanko issues a single monthly invoice in principle to the advertiser for the amounts payable by the advertiser to the members for events performed on the advertiser's website over the month prior to that current month, whether or not these events have undergone validation according to the provisions of article 14 "Validation period" of these general terms and conditions.

67. Kwanko's invoices are payable upon receipt, net and without discount.

68. The banking fees for payment of the invoices issued by Kwanko to the advertiser are borne by the advertiser and shall, where applicable, be billed or deducted from payments made by the advertiser to its account.

69. In case of absence of payment by the advertiser of all or part of an invoice issued by Kwanko within a period of 30 (thirty) days from receipt of that invoice by the advertiser, Kwanko may at its own discretion, charge the advertiser the following penalty for moratorium interest, without prejudice to its right to claim indemnity for damages related to that delayed payment.

70. The amount of this penalty is calculated on the following basis:

- 15% of the amount of the invoice;
- Late interest at 3 (three) times the French legal interest rate in force on the day of billing, per day late;
- Recovery fees.

71. This penalty is applied from the first day following the payment due date, until the day of payment and Kwanko may charge it without prior notice.

72. In case of absence of payment by the advertiser of all or part of an invoice issued by Kwanko within a period of 90 (ninety) days from receipt of that invoice by the advertiser, as guarantee for payment, it shall send Kwanko the database and all elements related to its customer base built through Kwanko's members network.

## 12. Modification of the advertiser's website

73. Any change to the name of the advertiser's website as well as any change to its hosting location, size, purpose or update frequency shall have no effect on these general terms and conditions, which shall lawfully and automatically apply to the modified website.

74. These general terms and conditions apply to all current or future hosting locations of the advertiser's website as well as any websites which may be owned by the advertiser in the future.

75. In the event that the advertiser divides its website into several different websites, or creates or acquires a new website, these general terms and conditions shall lawfully apply to all these new websites.

76. The advertiser undertakes to immediately inform Kwanko in case of significant change affecting the nature and content of its website.

77. The advertiser undertakes to inform Kwanko as soon as possible of any modification of the website which may lead to an alteration and/or loss of tracking data recorded by the platform allowing Kwanko to calculate the remuneration payable to it.

## 13. Tracking

78. Kwanko implements all the means to ensure tracking. Kwanko provides the advertiser the technical elements that it must install on its websites and the elements of its membership programme where applicable. The advertiser is prohibited from breaching it in any manner whatsoever.

79. In the event of tracking malfunction attributable to the advertiser, the latter must remedy it as quickly as possible.

80. If the advertiser does not restore the tracking within seventy-two (72) hours from the occurrence of the malfunction, Kwanko reserves the power to privatise the membership programme.

81. In such case, the advertiser shall pay Kwanko the higher of the two following values:

- The equivalent per click corresponding to the amount of gains from members over the period of one month prior to the alteration and/or loss of those data divided by the number of clicks performed over the period in question;
- The usual market price for equivalent categories of website.

82. Kwanko reserves the right to suspend the membership programme if the advertiser does not restore the tracking within seven (7) days following the occurrence of the malfunction.

## 14. Validation period

83. Where the advertiser's membership programme provides for remuneration "by form" or "by sale", the advertiser must complete this information in its membership programme under the "validation period" heading.

84. The validation period corresponds to the period during which the advertiser may consider invalid an event initiated by a web user on its website via the membership programme.

85. The advertiser undertakes to prequalify the grounds for which it may be led to consider an event as being invalid and inform Kwanko of same.

86. The validation period is set at 30 days maximum from the performance of the event.

87. During the validation period, the advertiser shall inform Kwanko, by any means, on the platform or via another procedure defined between the parties, the number, nature and amount of events to be cancelled and the grounds for such cancellation, the amount of the cancellations in all cases being capped for each membership programme at the monthly amount of the following events: 10% of the amount of fees billed for sales generated, and 15% of the amount of fees billed for forms generated.

88. Failing the advertiser having informed Kwanko of the cancellation of an event as well as its valid grounds, this event shall be definitively considered valid, and Kwanko's right to remunerations definitively obtained.

89. In any event, in the absence of indication by the advertiser of a validation period at the time of completing the online form for the membership programme, the advertiser shall lose the advantage of the preceding provisions.

## 15. Members network

90. Kwanko's constitution of its members' network is the result of its own substantial investment.

91. As a result, the advertiser is prohibited from entering into a direct or indirect relationship of affiliation with Kwanko's members throughout the term of these general terms and conditions and for a period of 12 months from their termination for any reason.

92. In the event that the advertiser decides to enter into a direct or indirect relationship of affiliation with one of the members of Kwanko's members network during the performance of these terms and conditions without Kwanko's authorisation, it shall pay it a sum equivalent to 12 (twelve) times the highest sales turnover generated by these general terms and conditions, including all membership programmes, in which this sum may be no less than 15,000 (fifteen thousand) euros excluding tax.

93. In the event that the advertiser decides to enter into a direct or indirect relationship of affiliation with one of the members of Kwanko's members network during the performance of these terms and conditions with Kwanko's authorisation, it shall pay it a sum equivalent to 6 (six) times the highest sales turnover generated by these general terms and conditions, including all membership

programmes, in which this sum may be no less than 7,500 (seven thousand five hundred) euros excluding tax.

## 16. Exclusivity

94. In the absence of agreement otherwise between the parties, the advertiser undertakes not to implement the membership programme on a membership platform in competition with that of Kwanko's throughout the term of these general terms and conditions.

## 17. Collaboration

95. The parties agree to collaborate directly in their relationship.

96. The advertiser undertakes to maintain an active and regular collaboration, transmitting to Kwanko all of the elements required for the performance of these general terms and conditions.

97. The advertiser undertakes to inform Kwanko of all difficulties that it may encounter in the performance hereof, in order to allow them to be dealt with as quickly as possible by Kwanko.

## 18. Guarantee

98. The advertiser guarantees to Kwanko that all the content of its membership programme complies with the laws and regulations in force in all respects.

99. The advertiser guarantees to Kwanko that it operates its activity in compliance with all the laws and regulations in force; and in particular for cases in which it markets products falling under the regulations put in place by law no.2016-1691 of 9 December 2016 regarding transparency, anti-corruption and economic modernisation (called "**Sapin II Law** ") in order to oversee the promotional communication for certain high-risk financial contracts and certain high-risk financial investments categorised as atypical.

100. Kwanko reserves the right to refuse all or part of the advertiser's membership programme if it deems that this campaign may harm its brand image or that of one of its partners.

101. The advertiser guarantees that it has the necessary rights, in particular intellectual property rights, for Kwanko and its members to use all information and elements that it shares with Kwanko for the performance of these general terms and conditions.

102. The advertiser guarantees Kwanko against all harmful consequences that may arise from the advertiser's breach of any of the commitments listed in these general terms and conditions and in particular all amicable or contentious recourse brought by third parties in relation to the performance of these general terms and conditions.

## 19. Third-party notification

103. In case of notification by a third party to these general terms and conditions of an advertiser's breach of a membership programme under all laws or regulations in force, Kwanko may terminate that programme without the advertiser's authorisation, conserving and/or billing all of the sums due by the advertiser.

## 20. Prejudice

104. Kwanko's responsibility in the context of these general terms and conditions is strictly limited to direct, real prejudice suffered and proven by the advertiser, excluding all indirect prejudice such as loss of earnings, loss of sales turnover or other and, in any event, shall not exceed the total of the sums received from the advertiser by Kwanko under these general terms and conditions for the six months prior to the event causing the contractual damage, after deducting the sums paid by Kwanko to the members.

## 21. Agreement regarding proof

105. The digital records, kept in IT systems, shall be conserved by Kwanko under reasonable security conditions and considered as proof of communication between the parties.

106. Contractual documents are archived on a reliable hard support that may be produced as proof.

## 22. Intellectual property of data and expertise

107. These general terms and conditions do not constitute any assignment of any sort of intellectual property or data rights on the elements constituted via Kwanko and belonging to Kwanko, to the advertiser's benefit.

108. The advertiser acknowledges and accepts that the content of the website, including but not limited to texts, data, photographs, videos, software and programmes, sounds, music, placements, graphic charts, logos, designs or any other information or support presented by Kwanko, are protected by copyright, trademark, licence and all other intellectual or industrial property right attributed to them according to the laws in force.

109. Any full or partial reproduction and/or representation of any of these rights or data, without Kwanko's express authorisation, is prohibited and constitutes counterfeit sanctioned by articles L. 335-2 and following of the Intellectual Property Code.

110. As a result, the advertiser is prohibited from any act or action that may directly or indirectly breach Kwanko's intellectual property rights or data rights without its authorisation.

111. The advertiser acknowledges that the information, data and databases accessible on Kwanko's websites or platforms are Kwanko's property.

112. This information and data may not be used by the advertiser for commercial purposes, or reproduced by the latter on a website, or compiled using research software, search engine or bookmark manager.

113. Kwanko shall conserve the ownership of the methods and expertise or tools that belong to it and the data produced, used or processed in the performance of the contractual services.

## 23. Commercial references

114. Kwanko may cite the advertiser's names and logo as commercial reference in accordance with commercial use, and the latter where applicable grants the authorisation to all private rights, including industrial property, attached to the names and logo.

115. In case of termination of these general terms and conditions, Kwanko shall reserve the right to use the advertiser's names and logo as a customer reference, unless explicitly requested by the advertiser.

## 24. Personal data

116. Each party shall ensure respect of their obligations under law no. 78-17 of 6 January 1978 in its current version in force and the European Directive on personal data which shall lawfully apply as of May 2018 entitled "General Data Protection Regulation (GDPR) 2018".

117. Kwanko undertakes to take all useful and appropriate precautions to preserve and ensure the security of personal data transmitted by the advertiser in the performance of these general terms and conditions, in particular to prevent that personal data from being deformed, damaged, destroyed or being accessed by unauthorised third parties. To this end, KWANKO strives to process personal data so as to comply with "note 26" of the European Directive on personal data which shall lawfully apply as of May 2018 entitled "General Data Protection Regulation (GDPR) 2018", by not collecting directly identifying data or where applicable, using a hashing function based on state-of-the-art technology in order to ensure the non-reversibility of this information being anonymised.

## 25. Confidentiality

118. In the context of these general terms and conditions, all information is confidential, including all information or data shared by the parties verbally or in writing.

119. The parties naturally undertake to:

- Treat confidential information with the same level of protection as they would their own confidential information of the same importance;
- Keep information confidential and ensure that it is not disclosed or susceptible to be disclosed, directly or indirectly to any third party;
- Not in any way breach the property rights attached to the confidential information;

- Avoid the confidential information being copied, reproduced or duplicated, in whole or in part, where these copies, reproductions or duplications are not directly linked to the performance hereof.

## 26. Legal and regulatory requirements

120. In the event of a request of transmission of all types of documents and data by an administrative or legal authority, based on the legal, judicial or regulatory obligations of the advertiser, Kwanko undertakes to perform all operations under the terms of the obligation.

121. All fees and charges shall be billed to the advertiser.

## 27. Suspension

122. In the event of the advertiser's failure to respect its obligations, Kwanko reserves the right to lawfully and without notice suspend the latter's membership programme. The suspension shall last indefinitely and shall end after the advertiser notifies Kwanko by registered letter with acknowledgement of receipt that it has complied with its obligations.

123. This right of suspension may be invoked by Kwanko, not limited to the following cases:

- In case of non-payment of invoices due by the advertiser;
- In case of exhaustion of the permanent advance provided by the advertiser to Kwanko;
- In case of occurrence of a technical difficulty, preventing the membership programme from operating;
- In case of use of the membership programme for fraudulent purposes by the advertiser;
- In case of breach of the regulations in force via the advertiser's chosen membership programme;
- In case of insufficient performance of the membership programme showing that the minimum billing has not been reached for three (3) consecutive months;
- In other cases provided by these general terms and conditions.

## 28. Termination

### 28.1 Termination due to lack of traffic

124. In the event that the membership programme implemented by the advertiser does not generate any traffic to its site for six (6) months following the implementation of the membership programme, the general terms and conditions shall be automatically terminated, without any formalities on the basis of the data conserved by Kwanko.

### 28.2 Termination due to fault

125. In case of breach by either party of the obligations provided in these general terms and conditions, not rectified within 8 (eight) days following notification by registered letter with

acknowledgement of receipt, the other party may lawfully terminate these general terms and conditions without prejudice to all damages and interest that it may claim in virtue hereof.

#### 28.2.1 Termination by the advertiser

126. The advertiser may lawfully terminate these general terms and conditions without prejudice to all damages and interest that it may claim in virtue hereof, in the event of:

- Exhaustion of the provisional budget of the membership programme, set in advance between the parties;
- Interruption of the service for more than two of the member's business days.

#### 28.2.2 Termination by Kwanko

127. Kwanko may lawfully terminate these general terms and conditions without prejudice to all damages and interest that it may claim in virtue hereof, in the event of:

- Non-payment of due invoices by the advertiser;
- Exhaustion of the permanent advance provided by the advertiser to Kwanko;
- Occurrence of a technical difficulty, preventing the membership programme from operating;
- Use of the membership programme for fraudulent purposes by the advertiser;
- Breach of the regulations in force via the advertiser's chosen membership programme;
- Insufficient performance of the membership programme showing that the minimum billing has not been reached for three (3) consecutive months.

## 29. Consequence of the rupture of these general terms and conditions upon membership programmes

128. If these general terms and conditions are terminated or denounced:

- By one of the parties in the absence of fault, the advertiser's membership programmes currently in operation shall end upon notification by the more diligent party by any means. As a result of one or more faults by the advertiser, the advertiser's membership programmes currently in operation shall end at the latest on the day of notification by registered letter with acknowledgement of receipt to the party at fault, and at the latest within two days. Outstanding sums payable by the advertiser to Kwanko for these programmes shall be determined on the end date of performance of the latter.

129. In case of rupture, denunciation or termination of these general terms and conditions for any reason whatsoever, the names of the members shall be automatically hidden on the platform, upon receipt of the letter or email of termination.

130. On the effective date of termination of these general terms and conditions, plus where applicable the validation period, a rendering of accounts shall be performed:

- If it appears that the advertiser account is in debit, the latter must promptly settle its position and pay the outstanding balance to Kwanko;
- If it appears that the advertiser is in credit, Kwanko shall return these sums to the advertiser within a period of 30 (thirty) days following the date of termination of these general terms and conditions, deducting the sums due by the advertiser to the Kwanko, which Kwanko shall offset.

## 30. Responsibility

131. Each party is responsible for its actions, acts, agreements, products and services, as well as the obligations imposed upon it by these general terms and conditions.

### 30.1 Responsibility of Kwanko

132. Kwanko is solely responsible for the quality of services that it provides under the membership programmes.

133. Kwanko is solely responsible for the advertiser's access to the data on the membership platform.

134. Kwanko shall not be held responsible for the actions of the member participating in the advertiser's membership programme or the content on the latter's website.

135. Kwanko may not be held responsible for rendering the advertiser's membership programme.

### 30.2 Responsibility of the advertiser

136. The advertiser acknowledges that as Kwanko acts only as a technical intermediary, it is solely responsible for its own website and its content and that of its membership programme.

137. It shall remain solely responsible for the contractual and commercial relationships directly with customers making orders through it for one or more of its products and/or its services.

## 31. Insurance

138. Kwanko undertakes to obtain and maintain an insurance policy from a reputed solvent company established in France, for all pecuniary consequences of its civil, professional, criminal and/or contractual responsibility as a result of bodily, material and immaterial damages caused to the advertiser and all third parties in the performance of these general terms and conditions.

139. To this end, Kwanko undertakes to settle all professional civil responsibility premiums for all its activities related to these general terms and conditions.

140. The advertiser may obtain the insurance certificates indicating the nature of the risks covered and their amount as well as any justification, in particular relation to the settlement of premiums.

## 32. Force majeure

141. Firstly, force majeure events shall suspend the performance of these general terms and conditions.

142. If force majeure events last for longer than two months, these general terms and conditions shall be automatically terminated, unless otherwise agreed by the parties.

143. Force majeure events are expressly considered to include those defined by the case law of the French courts, as well as the following events:

War, strikes, fire, internal or external war, lock out, occupation of Kwanko's premises, flooding, earthquakes, storms, water damage, legal or governmental restrictions, legal or regulatory modifications of forms of marketing, accidents of all types, epidemic, pandemic, illness affecting more than 10% of Kwanko's personnel in a period of two consecutive months, absence of energy supply, partial or complete stoppage of Internet supply, and generally private or public telecommunications networks, road blockages and preventions of supply and any other case independent of the parties' express wish preventing the normal performance of these general terms and conditions.

### 33. Good faith

144. The parties undertake to fulfil their obligations in perfect good faith.

### 34. Legal authorisations

145. The parties undertake to have at its disposal all legal and administrative authorisations necessary for the performance hereof.

146. The parties undertake to collaborate for the performance of new legal and administrative authorisations and for any modifications to existing authorisations.

### 35. Legal developments

147. These general terms and conditions may be modified by written addendum, signed by Kwanko's and the advertiser's representatives authorised to this effect, in order to take into account all legal developments that may affect the purpose of these general terms and conditions.

### 36. Tolerance

148. The parties reciprocally agree that in the event that one of the parties tolerates a situation, this shall not grant the other party the rights related thereto.

149. In addition, such tolerance may not be interpreted as a waiver of the rights in question.

### 37. Sincerity

150. The parties declare these commitments to be sincere.

151. To this end, they declare not to be aware of any element that would change the other party's consent.

## 38. Independence

152. The parties acknowledge that each acts on their own behalf as independent traders and shall not be considered as agents of each other.

153. The general terms and conditions do not constitute an association, franchise or mandate given by either party to the other.

154. In addition, each of the parties remains solely responsible for its acts, allegations, commitments, services, products and staff.

## 39. Assignment of the general terms and conditions

155. These general terms and conditions shall not be the object of a total or partial assignment, paid or free, by either of the parties, without the prior written permission of the other party.

## 40. Addendum

156. These general terms and conditions may only be amended by written addendum, signed by Kwanko's and the advertiser's representatives authorised to that effect.

157. This addendum, after signature by Kwanko's and the advertiser's representatives, shall prevail over the provisions of these general terms and conditions.

## 41. Headings

158. In the event of difficulty of interpretation arising from a contradiction between one of the headings at the top of the clauses and the content of any of the clauses, the headings shall be deemed non-existent.

## 42. Invalidity

159. If one or more provisions of these general terms and conditions are made invalid or declared as such by application of a law, regulation or a decision made by a competent court, the other provisions shall keep their effect and relevance.

### 43. Entirety

160. These general terms and conditions express the entirety of the parties' obligations.

### 44. Prescription

161. All legal actions between the parties are prescribed, unless where provided otherwise by public order and within a shorter time frame than that provided herein, if they have not been brought within two years from the first claim notified by registered letter with acknowledgement of receipt.

### 45. Persisting clauses

162. The clauses declared as persisting after the end of the term of the general terms and conditions, of any terms of assignments, such as expiry or rupture of contract, shall continue to apply until the end of their particular purpose. This applies in particular to clauses regarding property and confidentiality.

### 46. Domicile

163. For the performance of this agreement and unless where provided otherwise, the parties agree to address all correspondence to their respective registered addresses.

### 47. Law

164. These general terms and conditions are governed by French law.

165. This applies to substantive and formal rules, notwithstanding the places of performance of the substantial or accessory obligations.

### 48. Jurisdiction

166. In the event of dispute and failing amicable solution, express competence is assigned to Nanterre commercial court, notwithstanding plurality of defenders or guarantee call, even for emergency proceedings or interim security ruling or by request.

## 49. Signature

Issued in .....

In ..... original copies

For Kwanko

For

Name

Name

Position

Position

Date

Date

Signature

Signature

## Special terms and conditions between Kwanko and the advertiser

Kwanko's service:

Description	Rates excluding tax	Quantity	Submission to or takeover by Kwanko	Final rates
<b>Kwanko's commission</b>	25% of total billing			
<b>Implementation fees</b>	€1,000.00			
<b>Management fees</b> <i>(after 2<sup>nd</sup> month of activity of the programme)</i>	€400 / month			
<b>Network access fees</b>	€150 / month			
<b>Minimum billing</b> <i>(after 2<sup>nd</sup> month of activity of the programme)</i>	€500 / month			
<b>Tracking fees: €250 ex. VAT / month</b>				
<b>Starter Pack</b>	€1,000.00			
<b>Booster Pack</b>	€1,000.00			
<b>Set creation rates: Mail kit + 6 gif banners</b>	€800 ex. VAT			
<b>Creations by request</b> <i>(Hourly rate)</i>	€75 / hour			

Other special conditions:

For Kwanko

For the advertiser

Name

Name

Position

Position

Date

Date

Signature

Signature

[Form in English]