

## PERFORMAX.CZ S.R.O.

### BUSINESS TERMS AND CONDITIONS

Prior to using any of the services and/or products by [Performax.cz](http://Performax.cz) s.r.o., please read carefully the following Business Terms and Conditions (hereinafter referred to as the “**Terms and Conditions**”). By using the services and/or products by [Performax.cz](http://Performax.cz) s.r.o. and/or by approving of the Terms and Conditions you undertake to comply with these.

#### I. Definition of Basic Terms

- 1.1 The **Provider** is [Performax.cz](http://Performax.cz) s.r.o., ID No.: 24291811, a company with its registered office at: Václavské náměstí 813/57, Nové Město, 110 00 Prague 1, entered in the Company Register maintained by the Municipal Court in Prague, Section C, File 193576, which:
  - a) deals with management and optimisation of advertising space on websites and in applications, including the so-called yield management;
  - b) is able to achieve optimal prices for online advertising in the Czech and international environments, taking into account specific conditions of clients and market segments in which they operate;
  - c) ensures efficient utilisation and optimisation of third-party advertising technologies to maximise performance in terms of online-generated revenue;
  - d) to this end, it has a set of techniques, expertise, know-how and licensing arrangements with third parties in the field of programmatic advertising systems and advertising networks.
- 1.2 The **Web pages** are the web pages available at [www.performax.cz](http://www.performax.cz).
- 1.3 **Prospective Partner** is an entity that owns and/or operates a Website, has Advertising Space on the Website and is interested in having it managed, optimised and/or utilised by the Provider in order to maximise revenue from Advertising.
- 1.4 The **Website** is a website or a desktop or mobile application owned or operated by a Prospective Partner.
- 1.5 **Advertising Space** is an advertising zone on the Website designed to display Advertising.
- 1.6 **Advertising** is an announcement, demonstration and/or other presentation on the Website that is intended to promote the business activities of the advertising message originator (advertiser).
- 1.7 The **Service** includes the Provider's activities listed in Article 1.1 of the Terms and Conditions and can be defined as the management and optimisation of the Advertising Space on the Website, which the Prospective Party entrusts to the Provider for the purpose of optimising Advertising within this Advertising Space on the Website and maximise revenue from this Advertising.
- 1.8 The **Product** is the performance specified in Article 4.4 of the Terms and Conditions.
- 1.9 The **Client** is a Prospective Partner who has agreed with the Provider on the scope and terms of their co-operation and who is provided with the Service and/or Product under these Terms and Conditions and/or an Order referring to these Terms and Conditions and/or a filled-in Online Form of the Provider referring to these Terms and Conditions. The Services and Products may also be provided to the Prospective Partner under an Advertising Co-operation Agreement, which will regulate the rights and obligations of the Parties in a comprehensive manner, where the decision whether the Service and/or Product will be provided to the Prospective Partner under the Terms and Conditions or the Agreement is solely at the Provider's discretion.

#### II. Basic Terms of Co-operation

- 2.1 The Provider undertakes to provide the Service and/or Product with professional care and in a manner ensuring the highest possible fee payable to the Client by Advertising originators, i.e. advertisers.

- 2.2 The Provider reserves its right to change the form of the Service and/or Product and/or to discontinue their provision altogether.
- 2.3 The Client is not entitled to distribute, participate in the distribution, redistribute and/or sell the Service and/or Product unless the Provider and the Client agree otherwise in writing.
- 2.4 Both the Service and the Product contain or may contain elements protected by intellectual property rights, in particular, copyrights, rights of a database author, patents and/or trademarks. The Client, alone or through third parties, will refrain from any action that infringes or may infringe the Provider's intellectual property rights.
- 2.5 The Provider does not guarantee continuous functioning and error-free operation of the Service and/or Product. However, it is in the Provider's interest that the Service and Product be provided to the Client at the highest quality possible.
- 2.6 The Provider will not misuse the Client's non-public information that the Provider learns in connection with provision of the Service and/or Product and will not disclose it to any third parties without the Client's express consent.
- 2.7 The Provider is entitled to use the Client's logo as a reference.
- 2.8 The Provider protects the data stored in its systems against misuse.
- 2.9 Information, data and statistics stored and/or located in the Provider's systems and/or in systems managed by the Provider are the property of the Provider unless these represent content supplied by the Client.
- 2.10 If the Provider or its contractual partners make a change to the technical conditions of the co-operation that will require an intervention or other activity on the Client's part, the Provider undertakes to inform the Client of this need no later than ten calendar days before the effective date of the given change. The Client undertakes to make all necessary changes within five business days of receiving the notice of the need to make such changes, if technically possible, or inform the Provider of the need to extend the time limit for executing the necessary changes.
- 2.11 The Client undertakes to defend the Provider's interests and protect the Provider against any third-party claims, for which the Client assumes full responsibility if they arise from:
  - a) the content of the Advertising Space and the rights to manage the Advertising Space that the Client has provided or made available to the Provider;
  - b) failure of the Client to comply with the Terms and Conditions;
  - c) non-standard requests by the Client from the Provider related to provision of the Service and/or Product.
- 2.12 The Provider undertakes to defend the Client's interests and protect the Client against third-party claims for damages:
  - a) if use of the Service and/or Product in accordance with the Terms and Conditions results in a violation of the Act No. 40/1995 Coll., on regulation of advertising, as amended, or a violation of third-party rights arising from intellectual property rights and/or trade secrets;
  - b) as a result of a violation of the Terms and Conditions by the Provider or its contractual partners.
- 2.13 The Party against which a third party asserts a claim under Articles 2.11 and 2.12 is obliged to notify the other Party immediately and co-operate with it in defending their common interests. The Party against which the third-party claim is asserted has full control and authority and is responsible for defending its interests. Should resolution of a given dispute require a written statement from the other Party, the other Party undertakes to provide it without any undue delay.
- 2.14 The Party receiving any information from the other Party undertakes to treat the information confidential and not to disclose the information to any third party without a prior written consent by the other Party, with the exception of the receiving Party's contractual partners, employees, consultants and/or collaborators who need the information in connection with provision of the

Service and/or Product and who has committed in writing to treat the information confidential. The receiving Party is liable for ensuring that these authorised persons and entities will use the confidential information only in connection with provision of the Service and/or Product and will take appropriate measures to protect the information. A Party is entitled to disclose confidential information to third parties only if it is required by applicable legal regulations, but it undertakes to inform the other Party of such action where possible. The Provider states that it considers the following information to be always confidential: access to the Provider's online reporting and data contained therein, performance of individual Advertising Slots, specific terms and conditions agreed, and contractual documentation of the Parties as well as any information from e-mail communication marked as "confidential".

- 2.15 The Provider reserves the right to restrict and/or cancel the Client's access to the Service and/or Product if the Client violates these Terms and Conditions. Where feasible, the Provider will provide the Client with adequate justification.
- 2.16 The Provider is not liable to the Client or any third party for damages caused by the procedure under this Article of the Terms and Conditions.
- 2.17 To the maximum extent permitted by applicable law, neither Party nor its contractual partners will be liable for any loss, damage, harm and lost profits incurred by the other Party. This does not apply in the case of obligations under Articles 2.3, 2.4, 2.11, 2.12, 2.13, 2.14 and 6.7 of the Terms and Conditions, in case of gross negligence and wilful misconduct and in cases where these Terms and Conditions expressly provide for contractual penalties.
- 2.18 For the purpose of optimisation and/or provision of the Service and/or Product, the Provider may request the Client to provide an overview of anonymised results from analytical tools monitoring the Website on which third-party Advertising has been placed through advertising systems supplied by the Provider.

### III. Rules for Provision of the Service

- 3.1 The Client will allow placement of advertising systems and advertising and issuing scripts of the Provider and its contractual partners (hereinafter referred to as the "**Advertising Script**") on the Website for the purpose of optimising Advertising and placing third-party Advertising within the Advertising Space.
- 3.2 Administrator accounts in the Provider's advertising systems related to the Website are managed by the Provider.
- 3.3 The Client undertakes to notify the Provider of any change in the Advertising Space that could affect the provision of the Service at least five calendar days before executing such a change.
- 3.4 The Client acknowledges that third-party Advertising will be displayed on the Website. The Provider does not directly influence the content of Advertising, is not the advertiser or processor thereof and is not responsible for these. The Provider undertakes to monitor the content of Advertising to a reasonable extent and provide the Client with appropriate assistance in removing Advertising from the Client's Website if such Advertising does not comply with applicable legal regulations, the Advertising Code issued by the Advertising Council and/or foreign advertising codes of a similar nature or if the Advertising is in apparent contradiction to good morals. The Provider is entitled to remove any unsound Advertising upon the Client's request. The Client acknowledges that removal of unsound Advertising may result in reduced revenue from the placement of third-party Advertising through the advertising systems supplied by the Provider.
- 3.5 The Client is entitled to use the Service only within the Advertising Space that the Provider approved in advance.
- 3.6 The Client represents that it is technically and legally competent and authorised to manage the Advertising Space.

#### **IV. Specific Cases of Cooperation**

- 4.1 If the Client uses the Service exclusively under these Terms and Conditions, the co-operation is agreed for an indefinite period and may be terminated by agreement of the Parties or by a written notice of termination with a three-month notice period, which commences upon the first day of the calendar month following the month in which the notice is delivered to the other Party. The Parties are obliged to continue fulfilling their obligations during the notice period. The Client's obligation to keep a functional Advertising Script on the Website or in its advertising systems will continue during the notice period unless otherwise specified below.
- 4.2 Prior to using the Service, a time-limited test of the options of monetisation of the Advertising Space on the Website (hereinafter referred to as the "**Test**") may be carried out on the basis of an Order, which will contain a reference to these Terms and Conditions and at least the following information: identification of the Parties, the subject of the Test, the Service used to carry out the Test, the Test period, the fee payable to the Client and its due date, and the contact details of the Parties. In the event of a Test, a binding legal relationship is established at the moment when the Provider confirms the Order to the Client without any reservations. A declaration of will that contains additions, reservations, limitations and/or other changes constitutes a rejection of the Order and is considered a new offer, while the Parties must unconditionally agree on all terms of co-operation. A Test is terminated by agreement of the Parties or upon expiry of the period for which it was agreed. The Parties are obliged to perform their obligations throughout the Test period, including the Client's obligation to keep a functional Advertising Script on the Website or in its advertising systems.
- 4.3 StickyStack is a Service available on the Provider's web pages that allows the Client to monetise the Advertising Space on the Website or a part thereof in an easy and accessible form (hereinafter referred to as the "**StickyStack**"). A StickyStack order is placed by completing and submitting an online form on the Web pages (hereinafter referred to as the "**Online Form**"), which includes these Terms and Conditions. As regards StickyStack, a binding legal relationship is established at the moment when the Provider provides StickyStack to the Client. The Provider is entitled to refuse to provide StickyStack to the Client without giving any reason, which constitutes a rejection of the Order concerned. The Client is entitled to terminate StickyStack without giving any reason and with immediate effect by removing the Advertising Script from the Website, which will result in the Provider terminating the monetisation of the Website. The Provider is also entitled to terminate StickyStack without giving any reason and with immediate effect by suspending the monetisation of the Website in question. The Parties will be notified of the provision or non-provision and termination of StickyStack. In the event of termination of StickyStack, the Parties will settle their mutual legitimate claims.
- 4.4 The Client may also order other Products from the Provider, which will be supplied or provided on the basis of specific Orders containing key parameters of cooperation, including the Terms and Conditions hereof.

#### **V. Fee and Terms of Payment**

- 5.1 Advertisers will pay the price for Advertising displayed within the Advertising Space on the Website directly to the Provider.
- 5.2 The Client is entitled to a fee calculated from the sum of all fees in CZK, excluding VAT, paid by the advertisers of the Advertising displayed in the Advertising Space on the Website to the Provider for a given calendar month, in the following amount:
  - a) if the Client uses the Service or Product only under these Terms and Conditions, the specific amount of the fee will be determined by agreement of the Parties;
  - b) if the Client uses the Service or Product under an Order, the specific amount of the fee will be indicated in the Order;
  - c) in case of StickyStack, the Client is entitled to a 70% fee,while the remainder represents the Provider's fee for provision of the Service.

- 5.3 The exact amount of the Client's fee in a given calendar month will be determined on the basis of an electronic statement submitted by the Provider, containing the total fee for the Client in a given calendar month, always no later than 15 calendar days after the end of the relevant calendar month.
- 5.4 On the basis of the aforementioned statement, the Client will issue a tax-quoting document – invoice (hereinafter referred to as the **"Invoice"**) each calendar month for the fee calculated pursuant to the Terms and Conditions.
- 5.5 If the Client is a value-added tax (hereinafter referred to as **"VAT"**) payer, VAT will be added to the Client's fee in accordance with generally applicable legal regulations.
- 5.6 The Client's fee under these Terms and Conditions is payable monthly, within 45 calendar days from delivery of the given Invoice to the Provider, by bank transfer to the Client's account indicated in the Invoice.
- 5.7 The Provider agrees that the Client will issue all Invoices electronically and deliver them to the Provider's e-mail address: [faktury@performax.cz](mailto:faktury@performax.cz).
- 5.8 The fee will be deemed settled once the corresponding amount is credited to the Client's account. The Invoice, as the tax-quoting and accounting document, will comply with the requirements and general business practices and generally binding legal regulations and will serve as the supporting document for payment of the fee.
- 5.9 The price for the Product will be indicated in the Order. The Product is typically provided at an hourly rate, and its price will be determined as a multiple of the hourly rate and the actual time spent. The price of the Product may also be determined as a fixed amount. The price will be paid on the basis of an Invoice payable within 30 calendar days from its delivery to the Client, and the Provider is entitled to invoice the price for the Product on a monthly basis or by one Invoice after the Product has been duly provided, as agreed by the Parties. The price will be increased by statutory VAT.

## **VI. Personal Data Protection**

- 6.1 The Provider is an independent controller of the personal data obtained from the Client's Website.
- 6.2 The Provider processes personal data for the purpose of targeting Advertising and providing the Service and/or Product.
- 6.3 The Provider undertakes that since personal data (as defined by applicable legal regulations) of the Website users is processed within the provision of the Service or Product, the Provider will proceed with the processing of personal data in full compliance with applicable data protection legal regulations, in particular with Act No. 110/2019 Coll., the Act on the Treatment of Personal Data (hereinafter referred to as the **"Act"**) and in accordance with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27<sup>th</sup> April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing the Directive 95/46/EC (hereinafter referred to as the **"Regulation"**). The Provider is fully responsible for processing of personal data, in particular, for fulfilling information obligations towards the persons concerned and for ensuring the exercise of their rights under the Regulation.
- 6.4 If the personal data of the Client's Website users is processed in the provision of the Service or Product, the Provider undertakes to ensure the security of personal data of the Website users by appropriate technical and organisational measures to ensure an adequate level of personal data security as required by the Act and/or the Regulation so that there could be no unauthorised or accidental access to personal data, unauthorised transfer, their other unauthorised processing, as well as their other misuse. The Provider represents that it has technical and organisational measures in place to such an extent that the security of personal data cannot be breached.
- 6.5 If the personal data of the Client's Website users is processed in the provision of the Service and/or Product, the Provider will treat the personal data confidential and process all the personal data exclusively in accordance with this provision and applicable laws and solely for

the purpose of providing the Service and/or Product. The Provider acknowledges that it acts as a data controller in the processing of the personal data of Website users.

- 6.6 If the personal data of the Client's Website users is processed in the provision of the Service and/or Product, the Provider will publish a privacy notice on the Web pages that meets the requirements of the Regulation and clearly and comprehensibly informs about the scope and purposes of collecting, disclosing and using personal data to which the Provider gained access through the Client's Website, including a description of personal data processing for the purposes of interest-based advertising by third parties or any targeting of advertising and an indication of appropriate safeguards and measures to protect personal data.
- 6.7 The Client is obliged to publish a visible and easily accessible link to the aforementioned information of the Provider on the Website.
- 6.8 The Provider undertakes not to collect or process sensitive personal data as defined by the Regulation in any way through the Client's digital environment.
- 6.9 The Provider undertakes not to transfer any personal data outside the state where such personal data was provided.
- 6.10 The Provider further undertakes to provide the Client with reasonable assistance in any personal data protection impact assessment that the Client rightly considers to be required in accordance with Article 35 and/or Article 36 of the Regulation, always exclusively in connection with the Provider's processing of personal data.
- 6.11 The Provider undertakes to fully cooperate with the Client in addressing substantiated requests for information, whether from the Client or from data subjects (the Client's Website users) regarding the specific processing of personal data.
- 6.12 This Article of the Terms and Conditions will reasonably apply even if the Provider obtains personal data from an Agreement, Order and/or Online Form. Personal data is processed in the following scope: identification data and contact details of the Client and its employees and/or collaborators, e-mail, URL of the Website, and/or text messages and/or data from modelling calculators in case of StickyStack. The legal basis for processing of the personal data is the performance of the contract between the Provider and the Client.

## **VII. Applicability of the Terms and Conditions and Amendments thereto**

- 7.1 The Terms and Conditions and legal relationships between the Provider and the Client are governed by generally binding legal regulations applicable in the Czech Republic; any disputes will be resolved by Czech courts having substantive and territorial jurisdiction.
- 7.2 The Parties hereby assume the risk of any change in circumstances pursuant to Section 1765(2) of Act No. 89/2012 Coll., the Civil Code, as amended.
- 7.3 The Provider reserves its right to amend these Terms and Conditions unilaterally to a reasonable extent. The Provider will notify the Client of the amendment to the contact e-mail at least seven calendar days before the amendment takes effect. The Client is entitled to refuse the amendment and proceed in accordance with Act No. 89/2012 Coll., the Civil Code, as amended. In the event of termination of co-operation, the Parties will settle their mutual legitimate claims. If the Client uses the Service or Product after the amendment to the Terms and Conditions has become effective, the Client will be deemed to have accepted the amendment.
- 7.4 The Terms and Conditions hereof will cease to apply as at the date these are replaced by newer Terms and Conditions.