

Terms of Service

AdSwift B.V.

These AdSwift Terms of Service ("ToS") constitute a legally binding agreement between AdSwift B.V. ("AdSwift") and the individual or entity accepting these Terms of Service ("User"). These Terms of Service govern your access to and use of the AdSwift Application and related services ("Services").

By completing the registration process, or otherwise accessing or using the Services, the User acknowledges having read, understood, and agrees to be bound by these Terms of Service.

In consideration of the mutual promises and covenants set forth herein, the User and AdSwift (hereinafter: each "Party" and together "Parties"), agree as follows:

1. Definitions

The following definitions apply to the Agreement, including all its associated annexes:

1.1 Account

A unique account created for a Seller or User to access and use the Application and its functionalities.

1.2 AdSwift

AdSwift, part of AdSwift B.V., a private limited liability company incorporated under the laws of the Netherlands, with its registered office at Mgr. Hermuslaan 66a, Sint-Michielsgestel, the Netherlands, registered with the Dutch Chamber of Commerce under number 97359351, VAT identification number NL868017711B01.

1.3 Action

A measurable and trackable user activity resulting from a marketing placement or campaign facilitated through the Application, including but not limited to a click, lead submission, or completed purchase.

1.4 Agreement

These Terms and Conditions govern the access to and use of the Application, including any annexes, policies, or documents incorporated by reference, as amended from time to time.

1.5 Application

A piece of software provided by AdSwift, through which Users access and use the Application, including the authenticated environment in which Users can access analytics data, functionalities, and information related to the services, and these Terms of Service.

1.6 Commission

The transaction fee set in the Application payable to AdSwift for each Registered Transaction.

1.6 Data Connection

A software component with which the User authorizes the connection between the User's account on an External Platform and the Application.

1.7 Last-Click Attribution

An attribution model whereby a Registered Transaction is attributed to the Partner whose tracking interaction is the last one to occur before the transaction, within the applicable attribution period of 30 (thirty) days, unless otherwise agreed.

1.8 Login Credentials

Username and password created by the User for access to or interaction with the Application.

1.9 Payment Term

The payment period for an invoice must be met. Unless otherwise agreed in writing, all invoices issued by AdSwift are payable within thirty (30) days from the invoice date.

1.11 Application Fee

The monthly fee payable by the Seller to AdSwift for access to and use of the Application and related services.

1.12 Product Information

All information, including, however, not limited to data, images, trademarks, logos, descriptions, and other marketing materials relating to a Seller's brand or products that are made available through the Application for promotional purposes.

1.13 Partner

An independent third party that promotes Seller products or services through approved promotional channels in exchange for a Commission.

1.14 Registered Transaction

A purchase of a Seller's product or service by a Store User that is successfully tracked through the Application and attributed to a Partner in accordance with the applicable attribution rules.

1.15 Seller

Any legal entity that uses the Application to promote products or services.

1.16 Store Information

All information relating to the identity, legal status, and general business operations of a Seller, as made available through the Application and Seller's website. This includes, but is not limited to, the Seller's trademarks, logos, registered address, contact details, registration and VAT information, customer service details, opening hours, and applicable store-level policies, including shipping.

1.17 Third Party Providers

Any independent individuals, companies, or entities that are not owned, operated, or directly controlled by the Parties, but who may provide products, services, content, integrations, or functionalities in connection with or through the Services.

1.17 Third Party Website

Any website, application, platform, or online service that is owned or operated by a third party, including but not limited to Partners, through which referral marketing activities are conducted.

1.18 External Platform

An external digital system where the Seller already has an account to which the User gives AdSwift access via the Data Connection.

1.19 User

A natural person authorised by a Seller to access and use the Application on behalf of the Seller.

1.20 Store User

A natural person who accesses a Seller's website, application, or digital property and whose interaction may be tracked by the Application.

2. Applicability

2.1. These Terms of Service apply to all quotations, offers, proposals, agreements, and all other legal relationships between AdSwift and the Seller, including any future agreements between the Parties.

2.2. The applicability of any Terms of Service of the Seller is expressly rejected.

2.3. Deviations from these Terms of Service shall only be valid if expressly agreed in writing by both Parties.

2.4. In the event of any conflict between the provisions of an agreement and these Terms of Service, the provisions of the Terms of Service shall prevail.

2.5. We reserve the right, at our sole discretion, to suspend, restrict, or refuse access to the AdSwift Services to any person or entity, at any time and for any reason, without prior notice.

2.6. If any provision of these Terms of Service is or becomes invalid or unenforceable, the remaining provisions shall remain in full force and effect. The Parties shall, in such a case, agree on a replacement provision that reflects as closely as possible the purpose and intent of the original provision.

3. The agreement

3.1 These Terms of Service govern the User's access to and use of the Application, as well as any products or services provided by the Seller through the Application. By creating an account and accepting these Terms of Service during registration, the User enters into a binding Agreement with AdSwift. No separate written agreement is required.

3.2 The User must be older than (i) 18 years of age, or (ii) at least the age of majority in the jurisdiction in which the User resides and from which the User uses the Application to create an Account.

3.3 The User agrees not to access or use the Services for any unlawful, fraudulent, or unauthorised purpose. In using the Services, the User shall comply with all applicable laws, statutes, regulations, and ordinances in the jurisdiction from which the User accesses or uses the Services.

3.4 By accessing or using the Application, the User represents and warrants that:

- (i) The Terms of Service are read and understood.
- (ii) The User has the authority to bind itself and any entity the User represents; and
- (iii) agree to be bound by all terms of these Terms of Service.

3.5 The User shall provide accurate and complete information during registration and promptly update it as necessary. The Seller shall provide all cooperation reasonably required for the proper performance of the Services.

3.6 Any amendments or additions to these Terms of Service must be made in writing or electronically accepted by both Parties to be valid.

3.7 The Agreement takes effect upon acceptance of these Terms of Service and remains in force until the account is deleted and the last invoice is paid or until terminated in accordance with these Terms of Service.

3.8 AdSwift reserves the right to change, modify, add, or remove these Terms of Service at any time. AdSwift will provide the User with at least thirty (30) days' prior notice by posting the changes on the Application or sending an email to the Seller. Changes shall take effect unless the Seller notifies AdSwift in writing of its rejection within fifteen (15) days of receiving notice. Rejection of such changes may constitute grounds for termination of these Terms of Service by AdSwift.

3.9 The Seller may not assign or transfer these Terms of Service or any rights or obligations under them without the prior written consent AdSwift. AdSwift may assign or transfer its rights and/or obligations under these Terms of Service, in whole or in part, without restriction.

3.10 AdSwift reserves the right to refuse to enter into these Terms of Service with a Seller without stating any reason.

4. Integration and data connector

4.1 AdSwift B.V., operates adswift.com, provides Sellers a web-based application that shall be used for tracking Partners' advertising activities in the area of online marketing business, primarily, but not only, to help market Sellers' services or products online on third-party websites by advertisements.

4.2 AdSwift provides technology to facilitate tracking, attribution, reporting, and commission settlement between Sellers and Partners. AdSwift does not act as a reseller of the Seller's products or services.

4.3. AdSwift's role in connection with any promotion is limited to providing the Services as described herein. AdSwift makes no representations or warranties regarding the outcome, profitability, or success of any service by the Partner.

4.4 Sellers and Partners are solely responsible for the negotiation, execution, and performance. AdSwift does not guarantee, endorse, or assume responsibility for the conduct, quality, or performance of any Seller or Partner.

4.5 AdSwift measurement data shall be final and binding for reporting, tracking, and commission calculation. If the Seller has any doubts regarding the accuracy of AdSwift's records or measurement data, the Seller must notify AdSwift without undue delay in writing within a maximum of 6 months.

4.6 During the Term of this Agreement, the Seller shall:

(i) install and maintain the AdSwift application via the Shopify App Store for the duration of these Terms of Service;

(ii) not uninstall, disable, or otherwise interfere with the AdSwift application without providing at least thirty (30) days' prior written notice to AdSwift;

(iii) not remove, alter, disable, or manipulate any tracking technology implemented by AdSwift without AdSwift's prior written consent. If the Seller removes or manipulates such tracking technology without consent, AdSwift may suspend its services. In such cases, the Seller agrees to compensate AdSwift for the period during which tracking was unavailable or compromised. Compensation will be calculated based on the Seller's average daily conversions during thirty (30) days before the disruption, increased by fifty percent (50%);

(iv) grant AdSwift a worldwide, non-exclusive, royalty-free, fully paid-up licence to access, via Shopify or other agreed integrations, the Seller's Product Information and Store Information, including but not limited to GTINs (where available), product types, product names, product images, product descriptions, sizes, inventory levels, current retail prices, other product attributes, and delivery or shipping information by country.

4.8 AdSwift reserves the right, at its sole discretion, to review, edit, or remove any Product Information uploaded or posted to the Application. AdSwift does not control, verify, or endorse any Product Information. AdSwift does not undertake any obligation to monitor, review, or moderate Product Information submitted to the Application.

4.9 AdSwift aims to update the Seller's Product Information regularly, including multiple times per day where technically feasible, but does not guarantee the frequency or timing of such updates. The Seller remains responsible for verifying that Product Information is processed and displayed correctly. Any errors or processing issues must be reported to AdSwift promptly. AdSwift shall not be liable for any consequences arising from delays or errors in processing Product Information. Such issues do not relieve the Seller of its payment obligations.

4.10 Product Information is provided by the Seller, who remains solely responsible for its accuracy, completeness, and legality. AdSwift accepts no responsibility or liability for the content of the Product Information.

5. Terms of Payment

5.1 The Seller agrees to pay a monthly subscription fee, and any additional charges, which are set out in the Application's pricing schedule available at www.adswift.com/pricing, or are determined individually pursuant to a separate agreement concluded between AdSwift and the Seller.

5.2 AdSwift may, at its sole discretion and no more than once per calendar year, adjust the Application Fee(s) to reflect changes in AdSwift's costs of operating the Application or to account for functionality updates. If AdSwift elects to exercise this right, the following terms shall apply:

5.3 AdSwift shall provide the Seller with at least thirty (30) days' prior written notice of any proposed change to the Application Fee(s)

5.4 The Seller may object to the proposed change within thirty (30) days of receiving AdSwift's notice. If the Seller submits a timely objection, AdSwift shall have the right to terminate these Terms of Service upon written notice.

5.5 The amount of any Commission shall be as specified in the Application. The Seller may, at its sole discretion, elect to offer additional bonuses in accordance with these Terms of Service, as set out on the Application.

5.6 The Seller may amend the Commission applicable to future periods by providing thirty (30) Business Days' notice to Partners, either through the Application or by written notice. The Commission must not be reduced by more than 20% within any thirty (30) Business Day period without AdSwift's prior written consent.

5.7 The Seller may set a monthly billing cap. Upon reaching the cap, the Partner may pause promotion.

5.8 All amounts payable under this Agreement are exclusive of VAT, GST, sales tax, use tax, income tax, franchise tax, ad valorem taxes, and any other similar taxes. Where applicable,

such taxes shall be added at the prevailing rate. If required, these taxes shall be declared and remitted to the relevant tax authority by the party responsible for doing so under applicable law.

5.9 All amounts due must be paid in the currency specified on the invoice. Any costs related to currency conversion or any losses resulting from exchange rate fluctuations shall be the responsibility of the Seller.

5.10 Invoicing will be based on the Application's records and measurement data, unless otherwise explicitly agreed in writing. The Seller expressly accepts the Application's measurement system as the source of truth.

5.11 The payable commission fee shall be calculated on the subtotal basket value (Sales Before Returns) and in accordance with a 30-day cookie window, Last-Click Attribution model. No commission shall be charged to the Seller on shipping costs or local taxes.

5.12 The Seller shall pay a commission for each Registered Transaction generated through the Application. Deduplication of sales is not permitted within the Tracking Period under the last-click attribution model when the Store User has accessed the Seller's URL through any of the following means:

(i) Direct Access: by typing or entering the Seller's URL directly into a web browser.

(ii) Search and Social Media

By following the links appearing in:

(a) organic search results;

(b) paid search results for the Sellers' brand names;

(c) organic social media channels; or

(d) price comparison or aggregator websites.

(iii) Email Marketing

(a) As a result of internal email campaigns, including remarketing emails or newsletters sent by the Seller.

For the avoidance of doubt, deduplication shall apply only to actions tracked directly through the AdSwift Application in accordance with the standard tracking and attribution rules. It shall not override the exceptions listed above.

5.13 Invoices shall be sent to the Seller's billing email address specified in the UI or as otherwise communicated in writing to AdSwift.

5.14 The Partner will issue invoices for its services monthly. Payment is due within thirty (30) days of the invoice date, unless otherwise explicitly agreed and indicated on the invoice.

5.15 The Seller shall pay all invoices within the applicable Payment Term. All payments must be made either to the bank account designated in writing by AdSwift or by direct debit.

5.16 The Seller shall be deemed in immediate default if any invoice is not paid within the applicable payment term, without the need for a reminder or notice of default. From the date of default until full payment is received, the Seller shall owe statutory commercial interest on the outstanding amount.

5.17 If the Seller fails to pay the outstanding amounts, including any accrued interest, AdSwift is entitled to assign the claim for collection. All costs arising in connection with such collection, including judicial and extrajudicial costs, shall be borne by the Seller.

6. Intellectual Property

6.1 The Seller grants AdSwift a non-exclusive, transferable, royalty-free, worldwide license to use, reproduce, publish, display, and distribute the Seller's trademarks, logos, creative materials, Product Information, Store Information, and other content, provided by the Seller for:

- (a) operating and promoting the AdSwift partner network (the "Network");
- (b) enabling participating Partners to promote the Seller and its products or services; and
- (c) fulfilling AdSwift's rights and obligations under these Terms of Service.

AdSwift may grant sublicenses of the foregoing license to participating Partners to the extent necessary to enable them to promote the Seller and its products or services within the Network.

6.2 AdSwift grants the Seller a limited, non-exclusive, non-transferable, non-sublicensable, royalty-free, worldwide license to:

- (a) use the tracking links, tracking code, and related technical integration tools on the Seller's websites and designated URLs; and
- (b) access and use the AdSwift Application solely for the purpose of participating in the Application and performing its obligations under these Terms of Service.
- (c) The sublicense will end when:
 - (i) the Seller or AdSwift disables the Data Connection; or
 - (ii) the Terms of Service are terminated.

6.3 The Seller shall not, and shall not permit any third party to, modify, adapt, reverse engineer, decompile, disassemble, or create derivative works of the AdSwift Application,

Data Connection, or any related technology, except to the extent expressly permitted by mandatory law.

6.4 Each Party retains all right, title, and interest in and to its respective intellectual property rights. Except for the licenses expressly granted under this article, no rights are transferred or assigned under these Terms of Service.

6.5 The Seller shall indemnify, defend, and hold harmless AdSwift and its Group Companies (including their directors, employees, agents, and contractors) against any claims, damages, losses, liabilities, costs, and expenses (including reasonable legal fees) arising out of or relating to any third-party claim that the use of the Product Information and Store Information in accordance with these Terms of Service infringes any intellectual property or other rights of such third party.

7. Seller Application Access and Responsibilities

7.1 Access to the Application requires the use of Login Credentials and registration by an authorised representative of the Seller, providing current, complete, and accurate information as prompted during registration, including an email address and password. The Seller is responsible for connecting the Application through the Data Connection to the registered representative and ensuring that the Login Credentials are kept strictly confidential and not disclosed to any unauthorised third party.

7.2 The Seller is fully responsible and liable for all use of the Application through its Login Credentials, including any use by its representatives, employees, contractors, or other authorised users. This responsibility includes, without limitation to:

- (a) any CPA increase that may affect increased costs; and
- (b) the purchase of any additional Services through the Application.

7.3 The Seller shall immediately notify AdSwift in writing of any actual or suspected unauthorised access or use of the Application or any other breach of security. AdSwift shall not be liable for any loss or damage arising from unauthorised use of Login Credentials, except to the extent caused by AdSwift's willful misconduct or gross negligence.

7.4 AdSwift reserves the right to suspend, reset, or restrict access to the Application if it reasonably believes that security has been compromised or for maintenance, technical support, or service improvement purposes. AdSwift employees and contractors may occasionally log in to the Application to maintain or improve the Services, including assisting the Seller with technical or billing issues.

7.5 AdSwift reserves the right, at our sole discretion and at any time, to modify, restrict, refuse, or remove any information, material, or content made available on, through, or in connection with the Application or the Services, without prior notice.

8. Limitation of Liability

8.1 To the extent that AdSwift may be held liable, such liability shall be limited to the provisions set out in this article. Except as expressly provided herein, AdSwift shall have no liability whatsoever for any damages, irrespective of the legal basis upon which a claim for damages is brought.

8.2 AdSwift's total aggregate liability arising from any attributable failure in the performance of these Terms of Service, wrongful act, or otherwise, shall be limited to compensation for direct damages up to a maximum of the amount of the fees agreed under these Terms of Service and actually paid by the Seller.

If these Terms of Service have a duration exceeding three (3) months, the agreed amount shall be deemed to be equal to the fees due over the three (3) months immediately preceding the event giving rise to the liability.

In no event shall the total compensation for direct damages exceed EUR 2,500 (two thousand five hundred euros).

8.3 For these Terms of Service, "direct damages" shall exclusively mean:

- i. reasonable costs incurred to determine the cause and extent of the damage;
- ii. reasonable costs incurred to ensure that AdSwift's defective performance complies with these Terms of Service, unless such defective performance cannot be attributed to AdSwift;
- iii. reasonable costs incurred to prevent or mitigate damage, provided that the Seller demonstrates that such costs have resulted in the mitigation of direct damages.

8.4 AdSwift shall under no circumstances be liable for indirect or consequential damages, including but not limited to loss of profit, loss of revenue, loss of anticipated savings, loss due to business interruption, loss of data, or any other form of indirect damage.

8.5 The limitations of liability set out in these Terms of Service shall not apply if the damage is caused by wilful misconduct or gross negligence on the part of AdSwift or its managerial personnel.

9. Force Majeure

9.1 Neither Party shall be obliged to perform any obligation under these Terms of Service if and to the extent that it is prevented from doing so as a result of force majeure. Force majeure shall mean any circumstance beyond the reasonable control of the affected Party which cannot be attributed to it by virtue of law, legal act, or generally accepted principles.

Force majeure on the part of AdSwift shall in any event include, but shall not be limited to, non-attributable failures or defaults of suppliers, subcontractors, hosting providers, software providers, telecommunications providers, or other third parties engaged by AdSwift, as well

as interruptions in internet or network services, power failures, cyber incidents, government measures, epidemics or pandemics, fire, natural disasters, war, strikes, and any other external cause beyond AdSwift's reasonable control.

9.2 During the period in which the force majeure situation continues, the affected Party shall be entitled to suspend its obligations under the Terms of Service. If the force majeure situation continues for more than two (2) consecutive months, either Party shall be entitled to terminate these Terms of Service in whole or in part by written notice, without any obligation to pay compensation for damages arising from such termination.

9.3 Insofar as AdSwift has already performed part of its obligations under these Terms of Service at the time the force majeure event occurs, or can perform part of its obligations, AdSwift shall be entitled to invoice the performed or performable part separately. The Seller shall be obliged to pay such invoice in accordance with these Terms of Service.

10. Data Protection and Privacy

10.1 Each Party shall comply with all applicable data protection and privacy laws and regulations, including, where applicable, the General Data Protection Regulation ("GDPR").

10.2 To the extent that personal data is processed through the Application, the Seller shall act as the data controller, and AdSwift shall act as the data processor within the meaning of the GDPR, processing such personal data solely on behalf of and in accordance with the instructions of the Customer, unless otherwise required by applicable law.

10.3 Any personal data or information provided to AdSwift through the Application or the Services will be processed in accordance with the AdSwift Privacy Policy, available at: <https://www.adswift.com/privacy>

10.4 AdSwift may collect, use, and share aggregated or anonymised data that does not identify any individual user, including for purposes such as analytics, research, product development, service improvement, and illustrating general usage trends of the Services.

10.5 The User acknowledges and agrees that the Services may integrate with or rely on Third-Party Providers. The User grants AdSwift permission to allow such Third-Party Providers to access, process, and use Product Information and Store Information to the extent reasonably necessary to provide, operate, maintain, or improve the Services.

Any exchange of information or interaction between the Seller and a Third-Party Provider is solely between the Seller and the applicable Third-Party Provider. AdSwift shall not be responsible or liable for any access, disclosure, modification, loss, or deletion of Store Information resulting from the actions, omissions, or services of any Third-Party Provider, nor for any damages or losses arising in connection therewith.

11. Confidentiality

11.1 All information disclosed by one party to the other in connection with the performance of these Terms of Service, including but not limited to technical, commercial, financial, and operational information, shall be treated as strictly confidential.

11.2 The receiving party shall not disclose any confidential information to third parties without the prior written consent of the disclosing Party. It shall use such information solely for the purpose of fulfilling its obligations under the agreement.

11.3 Information shall in any event be deemed confidential if either Party designates or indicates such information as confidential.

12. Duration and Termination

12.1 These Terms of Service are concluded for an indefinite term, unless the Parties expressly agree otherwise in writing.

12.2 Each Party has the right to terminate these Terms of Service without giving reasons at any time, taking into account a one-month notice period. A Termination can be done in writing by registered letter, email, or via the secure online administration Application.

12.3 AdSwift is entitled to terminate these Terms of Service with immediate effect in case a Seller breaches these Terms of Service, primarily, but not only, in case of using the Application for any illegal purposes. In such a case, the Seller is not entitled to demand a refund of any part of the subscription fee paid. The Seller shall not violate any laws of the respective jurisdiction in which he advertises his services or products with the help of the Application.

12.4 Either Party may terminate these Terms of Service, in whole or in part, with immediate effect and without prior written notice of default, if the other Party applies for or is granted a suspension of payments, files for bankruptcy or is declared bankrupt, ceases all or a substantial part of its business operations, or if control of its business is wholly or partially transferred to a third party or merged with a third party.

12.5 Regardless of the reason for termination of the cooperation, the Seller shall be obliged to pay the already generated commissions and subscription fee to AdSwift in accordance with articles 5.11 and 5.12 of these Terms of Service.

13. Suspension

13.1 AdSwift reserves the right to suspend access to the Application or any Services, in whole or in part, temporarily or indefinitely, without prior notice, if AdSwift reasonably believes that:

(a) The Seller has breached any provision of these Terms of Service;

- (b) The Seller's use of the Services may cause harm to the Partner, other users, or third parties; or
- (c) suspension is necessary for maintenance, updates, security measures, or to comply with applicable laws or regulations.

13.2 The Partner shall use reasonable efforts to provide prior notice of any planned suspension, except in urgent cases or where advance notice is not reasonably practicable.

13.3 Suspension of the Services does not relieve the Seller of its obligations under these Terms of Service, including payment obligations.

13.4 The Partner shall not be liable for any direct or indirect damages, losses, or costs arising from the (temporary) suspension of the Services, except to the extent caused by the Partner's wilful misconduct or gross negligence.

14. Modification

14.1 AdSwift may, at its sole discretion, make changes to these Terms of Services.

14.2 AdSwift shall provide the Seller with at least (30) days' prior written notice of any proposed changes.

14.3 In the case of fundamental changes, the Seller may object to these changes and terminate these Terms of Service.

14.4 This objection must be received in writing by AdSwift before the date the new Terms and Services will take effect.

15. Applicable Law and Jurisdiction

15.1 All agreements between the Parties to which these Terms of Service apply shall be governed exclusively by the laws of the Netherlands.

15.2 Nullity of one or more provisions in these Terms of Service shall not affect the validity of the remaining provisions.

15.3 Any dispute arising out of or relating to this Agreement and/or any agreement between the Parties shall be submitted exclusively to the competent court in 's-Hertogenbosch, the Netherlands.
