

RAKUTEN DEUTSCHLAND GMBH - MERCHANT TERMS & CONDITIONS

DATED: September 2018

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MERCHANT GENERAL TERMS AND CONDITIONS

Dated: September 2018

1. GENERAL TERMS

Rakuten provides Marketplaces and Services, with an online platform for the conclusion of transactions between Merchants and third parties (Buyers). These terms and conditions set out the terms on which Rakuten offers Marketplaces and related services to Merchants and on which Merchants agree to receive those services. By registering for or using the Services, Merchant agrees to be bound by the terms of this Agreement, including the Price and Payment Annex, Supplementary Terms and the Rakuten Policies.

2. REGISTRATION

Merchant must complete the registration process for one or more of the Services. For the registration process Merchant has to deliver all necessary and requested documents, especially all documents which are necessary for identification. Rakuten can also provide these documents to his Payment Service Partner(s) to fulfil the legal requirements.

3. DEFINITIONS AND INTERPRETATION

3.1. The following terms have the meanings given unless otherwise stated:

"Account"	means Merchant's account with Rakuten, including Merchant's allocated Marketplace Presence management page;
"Agreement"	means these Merchant Terms and Conditions, including any document incorporated into them;
"Business Day"	means a day other than a Saturday, Sunday or public holiday in Germany
"Buyer"	means any third party who browses and/or buys Products from Merchant via Marketplace;

"Listings"	means Merchant's Products registered in Rakuten Merchant Backend;
"Marketplace"	means Rakuten's online and mobile retail platform as offered generally to the market from time to time;
"Merchant"	means the party whose details are included on the relevant application to sell Products via the Services and are recorded in the Merchant's Account;
Merchant Account Information	Means all filed documents and information about name, address, bank information, e-mail, telephone, etc.;
Merchant Backend	Means the frontend for Merchants to log in where they can amend and change all settings for their Marketplace Presence and fulfil the orders (Order Management)
"Marketplace Presence"	means Merchant's virtual presence on Marketplace;
"Payment Services"	means payment services provided to Merchant by Payment Service Partner;
Payment Service Partner	means a third party provider or who is responsible for the fulfilment of all payment transactions between Buyer and Merchant and Rakuten
"Payment Services Terms"	means the agreement between Merchant and Payment Service Partner for the provision of Payment Services
"Products"	means any goods or services offered for sale by Merchant on Marketplace;
"Rakuten"	means Rakuten Deutschland GmbH, Geisfelder Str. 16, 96050 Bamberg, Deutschland
"Rakuten Group"	means any company which is part of the Rakuten group of companies from time to time, including any parent, subsidiary or sister company of Rakuten;

"Rakuten Policies"	means terms referred to as such in this Agreement and incorporated by reference;
"Registered Buyer"	A customer who has made an order and has registered a customer account (Rakuten ID);
Merchant Backend	Merchant Backend where Merchant can install his Marketplace Presence
"Services"	means Marketplace and any related or ancillary services provided to Merchant by Rakuten under this Agreement;
"Supplementary Terms"	means terms referred to as such in this Agreement and incorporated by reference; and
"Transaction"	means a sale from a Merchant to a Buyer via Marketplace.

3.2. Any translated version of this Agreement is provided for convenience only. The governing version of this Agreement is the English language version.

3.3. In this Agreement (except where the context otherwise requires):

3.3.1. any reference to "writing" or "written" includes any method of reproducing words or text in a legible and non-transitory form and, for the avoidance of doubt, shall include e-mail and messaging functionality included into Accounts;

3.3.2. clause and paragraph headings are for ease of reference only and shall not affect the interpretation of this Agreement;

3.3.3. where the context requires, words in the singular shall include the plural and vice versa and reference to one gender shall include a reference to other genders and vice versa;

3.3.4. any reference to a person shall include any individual, firm, body corporate, association, joint venture, partnership, government, state or agency of state, in each case

whether or not having a separate legal personality. Reference to a company shall be construed so as to include any company, corporation or other body corporate wherever and however incorporated or established;

3.3.5. references to any party include its successors and permitted assigns;

3.3.6. any reference to an agreement or other document or any provisions or an agreement or other document is to it as amended, varied, supplemented, novated, or replaced;

3.3.7. references to "include" and "including" (or any similar term) shall be construed without limitation and general words (whether or not introduced by the word "other" or any similar term) shall not be given a restrictive meaning because they are preceded or followed by words indicating a particular class of acts, matters or things or specific examples which are intended to fall within the meaning of those general words; and

3.3.8. the actions and omissions of the employees, agents, contractors, officers, or attorneys of the Merchant shall be deemed to be the actions of the Merchant and the Merchant shall be vicariously liable for all such actions and omissions.

3.4. In the event of any ambiguity or inconsistency within this Agreement, the inconsistency shall be resolved by using the following order of precedence where those items higher in the list shall take precedence over those items lower down:

3.4.1. the Clauses of this Agreement; and

3.4.2. the Provisions of the Pricing and Payment Annex; and

3.4.3. the Provisions of the Rakuten Policies.

4. MERCHANT ACCOUNTS

4.1. Merchants must apply to open an Account on a Rakuten Marketplace.

4.2. Rakuten shall determine, in its complete discretion, whether or not to allow an applicant to open an Account and become a Merchant. The date that Rakuten notifies

Merchant that its application has been accepted and this Agreement is concluded shall be known as the "Account Open Date".

4.3. Merchant must at all times keep the details recorded on their Account up to date and complete. Any notice sent by Rakuten to the contact details held on Merchant's Account shall be effective notice for the purposes of this Agreement.

4.4. Rakuten will use the information provided by the Merchant during the Account opening process to assess the Merchant's suitability for an Account and will share such information with other Rakuten Group companies if needed and may, from time to time, share such information with trusted third parties including, but not limited to, credit referencing agencies. The Merchant hereby consents to such transfer for the purposes set out in this clause. Merchant is solely responsible for taking all reasonable steps to keep its:

- 4.4.1. Account secure, including keeping its Account details and all passwords secure;
- 4.4.2. own systems secure; and
- 4.4.3. all filed documents and Merchant Account Information always up to date.

5. RAKUTEN SERVICES

5.1. Rakuten shall use reasonable skill and due care to provide the Services to Merchants. Other than that, the Services are provided "as is" to Merchant.

5.2. Merchant expressly acknowledges that Rakuten may from time to time and without notice need to suspend Merchant's Marketplace Presence and/or the Services, as a whole or in part, in order to:

- 5.2.1. check and ensure compliance by Merchant with the terms of this Agreement;
- 5.2.2. repair, maintain or improve the Services;
- 5.2.3. remedy a technical fault; and/or

5.2.4. protect the legitimate interests of Buyers, other Merchants, Rakuten and/or members of the Rakuten Group.

Rakuten, or any member of the Rakuten Group shall not be liable to Merchant for any losses suffered by Merchant arising out of or in any way connected to Rakuten's exercise of its rights under this Clause.

5.3. Merchant shall be entitled to use the Services strictly in accordance with terms of this Agreement and Rakuten's reasonable instructions.

5.4. Rakuten shall in its sole discretion be entitled to change the Services from time to time. Rakuten shall give Merchant reasonable notice of any material change. Any changes will be effective upon the posting of such changes on the applicable Rakuten Merchant Backend Site or by sending via e-mail, and Merchant is responsible for ensuring awareness of any applicable changes or notices. All notices of material changes to the Agreement will be posted for at least 14 days. Merchant should refer regularly Rakuten Merchant Backend to keep up to date with the current Agreement and Policies and its compliance with them. MERCHANTS CONTINUED USE OF A SERVICE AFTER RAKUTEN'S POSTING OR INFORMING OF ANY CHANGES WILL CONSTITUTE MERCHANTS ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS.

5.5. Rakuten shall be entitled in its sole discretion to set a maximum number of Products that Merchant can offer for sale via its Marketplace Presence. The minimum number of products shall not fall under 1.000 products for each registration.

5.6. Merchant expressly acknowledges that it acts as principal in respect of and is solely responsible for all its dealings with Buyers and its Marketplace Presence. Merchant further expressly acknowledges that none of Rakuten or any member of the Rakuten Group acts as Merchant's agent at any time or in any respect.

5.7. Rakuten provides in some cases legal texts for the Merchants. Rakuten is responsible for the validity of these

texts and provisions. If the Merchants receives a valid warning letter or an infringement claim from a competitor or an official agency specifically in relation to the use of the 'legal texts', Rakuten shall be entitled to take over the defence of the claim and shall bear any reasonable costs imposed or incurred as a result of the claim. Rakuten will bear the costs only, if the Merchant informs Rakuten immediately about any infringement or received complaints and makes no admission of liability. In case of a justified violation or where Rakuten wants to defend its texts and/or practices, Rakuten can use its own lawyers to defend the Merchant and Rakuten will bear all costs in the first instance before court. Merchant shall cooperate fully with Rakuten to provide all necessary and requested information and declarations to support Rakuten in defending its position.

Rakuten can terminate this service at any time and shall give merchant reasonable notice before the changes will take effect.

5.7.1. Rakuten provides legal approved Terms and Conditions for the Marketplace presence which will be concluded between Merchant and Buyer and Rakuten is responsible for the legal validity of these Terms and Conditions. Merchant shall use this T&C for selling products via the Marketplaces and is not allowed to change or amend these T&C. If Merchant changes anything in these texts Rakuten will not be liable anymore and the merchant takes over all risks regarding the usage of these modified texts.

5.7.2. Rakuten provides also the Cancellation Policy for the Marketplace presence and is responsible for the legal validity of this Policy. Merchant can amend this Policy in some parts for his Marketplace Presence (i.e. for his address and who should bear the costs for returns). Merchant shall use this Cancellation Policy for selling products via the Marketplace and is not allowed to change or amend this Cancellation Policy except for the designated parts like address or shipping costs.

6. PAYMENT

6.1. Bankguarantee

Rakuten has a Bankguarantee which covers every payment from a customer to Rakuten, which Rakuten received on behalf of the merchant for the case of insolvency of Rakuten acc. to § 13 Zahlungsdiensteaufsichtsgesetz (ZAG). The Bankguarantee is secured by the Sumitomo Mitsui Banking Corporation Filiale Düsseldorf and Mizuho Bank Filiale Düsseldorf.

6.2. Escrow Service

6.2.1. The merchant instructs Rakuten to perform the fiduciary settlement of purchases made via Rakuten (escrow service).

6.2.2. After conclusion of the contract, Rakuten will inform the customer of the payment information corresponding to the chosen payment method and of the amount to be paid on the escrow account. The Merchant sends the goods after release by Rakuten within the deadline (Delivery time) specified by him in the order process and confirms Rakuten the shipment after sending the goods. Release by Rakuten will be done immediately after the order confirmation has been sent. If the customer has selected the method of payment "Prepayment", Rakuten grants the approval only after receipt of the payment in the escrow account.

6.2.3. The merchant instructs Rakuten to accept the amounts, that the Customers pay on the Merchant's purchase price claim, in the escrow account assigned to the payment method chosen by the customer and to use them only for the purpose of further payment processing as described below.

6.2.4. Rakuten is obliged to transfer the amount paid by the customer to the escrow account minus the fee payable to Rakuten after 16 days from the notification of the merchant about the shipment of the goods to the merchant.

6.2.5. If the customer makes use of his right of revocation/cancellation before **Rakuten has made the payment to the merchant**, the merchant instructs Rakuten to pay the full

amount paid by the customer back to the customer. Incurred commission claims against Merchants will remain in this case.

amount payable from the customer, minus any compensation payable to Rakuten to the merchant.

6.2.6. In the case of defects in the goods, a disagreement about the existence of defects between the merchant and the customer or any other conflicts, especially in the event that the merchant has shipped the goods to an address other than the one advised by Rakuten and the customer has not received the goods, it is up to the merchant to find a solution with the customer and instruct Rakuten accordingly how to deal with the amount paid by the customer and held by Rakuten in escrow. In his instructions, the Merchant must observe mandatory legal rights and claims of the customer. If no other instruction is given by the merchant within 16 days of the notification of the merchant about the shipment of the goods, the merchant shall order Rakuten to pay him the amount paid by the customer and held in escrow by Rakuten, less any fees or payments which must be paid from the merchant to Rakuten. The further reverse transaction with the customer is up to the Merchant. If the merchant has sent the goods to an address other than that communicated by Rakuten, he will - if Rakuten has already paid the amount paid by the customer to the merchant - payback the amount to Rakuten and take over the further processing with the customer.

6.2.7. If the merchant and the customer have an agreement in the event of disagreements about the contractual conformity of the delivered goods, how to proceed with the payment of the purchase price and further processing, this agreement must be notified to Rakuten and confirmed by both parties.

6.2.8. The amount paid on the escrow account will not bear interest.

6.3. Assignment of debt of the purchase price claims

6.3.1. If the customer's payment has not entered the escrow account within 16 days of the merchant's notification of the shipment of the goods in accordance with clause 6.1 of these terms and conditions, Rakuten will still pay the

6.3.2. In return for this payment, the Merchant already now in advance - suspensive due to the non-payment of the customer within 16 days after the notification of the merchant about the shipment of the goods according to section 6.1 of these Terms – assigns all purchase price claims against the customer, with whom the merchant concludes a contract on the Rakuten Marketplace.

6.3.3. Rakuten accepts the above assignment. The payment of the amount to be paid by the customer, minus the remuneration to be paid to Rakuten, represents Rakuten's remuneration for the above assignment of the claim by the trader. With the sold and canceled claims, the merchant assigns to Rakuten all the claims he makes the contract with the customer, in particular claims for abandon or return of delivered goods.

6.3.4. The payment of customers on receivables of Rakuten on a trust-hand account has a fulfillment effect for the final customer. The merchant authorizes Rakuten to withdraw the amount paid on Rakuten's claims on the escrow account.

6.4. Notification of the customer about payment processing by Rakuten

The merchant agrees to notify the customer of Rakuten's payment processing. For this purpose, it is necessary that the merchant places a corresponding note on the invoice for self-generated invoices or attaches an appropriate reference text as an info sheet in front of the invoice. The text and the info sheet are available in the Rakuten Merchant Backend.

6.5. Guarantee that the assigned claims are flawless

6.5.1. The merchant guarantees Rakuten until the time of fulfillment of the claim that the claims assigned under clause 4.2 of these terms and conditions are flawless/free of defects at the time of the assignment.

6.5.2. Flawless claims mean that

6.5.2.1. the claim exists in the specified amount;

- 6.5.2.2. the claim is due at the time of payment to the merchant;
- 6.5.2.3. the claim is not encumbered with rights of third parties;
- 6.5.2.4. there are no offsetting counterclaims;
- 6.5.2.5. the claim (including all ancillary rights) is free of objections(Einreden und Einwendungen);
- 6.5.2.6. the goods or services delivered by the Merchant to the Customer are in accordance with the contract and the buyer, e.g. Set-off and settlement, contestation, reduction, withdrawal, compensation for damages, supplementary performance or rectification can not be asserted;
- 6.5.2.7. There are no prohibitions on assignment or other legal impediments to effective assignment;
- 6.5.2.8. the Buyer has consented to the assignment and disclosure of its data to the extent necessary for the effective assignment;
- 6.5.2.9. The shipping is done only after the release by Rakuten.
- 6.5.3. The merchant guarantees that the claims, even after the assignment, have not been changed by him in their legal existence, in particular not by remission agreements with debtors.
- 6.5.4. Rakuten may demand supplementary performance (removal of the defect) in such cases. After expiry of the term Rakuten can reduce the purchase price, withdraw from the payment guarantee and the purchase of receivables and claim damages in addition. The same applies if the deadline is dispensable.
- 6.6. Payment Guarantee / Risk of bad debts (delcredere) liability
 - 6.6.1. Rakuten shall assume the risk of bad debts against the merchant in the context of the assignment in accordance with clause 4.2 of these T&C, if the order was processed by Rakuten's fiduciary service and the customer has not paid the amount previously notified by Rakuten

pays to the Loyalty Account within 16 days after notification of the merchant about the shipment of the goods as described above Pursuant to Section 4.1 of these Terms and Conditions..

- 6.6.2. For all claims assigned to Rakuten, Rakuten bears the risk of insolvency of the customer as described above. The conditions of insolvency are determined by the insolvency code. The insolvency is presumed if the customer does not pay maturity to Rakuten within the contractually agreed period, unless the payment obligation is substantiated by the customer before or after expiry of the period.

6.7. Support of the trader to assert the claims

The Merchant undertakes to provide Rakuten with all documents and goods at its own expense necessary to prosecute the claims which have been demanded by Rakuten for assertion. He is obliged to keep suitable documents, such as delivery notes, dispatch or delivery proofs, for at least 3 years. Furthermore, the dealer gives Rakuten the power of attorney and the order to assert the claim in his name and to enforce it in court.

6.8. Exclusionary rule

The Merchant is not entitled to assert the claims themselves or exploit them in any other way.

6.9. Credit Card Processing

- 6.9.1. Rakuten is an aggregator of credit card payments between the merchant and the customer. The acquirer and partner of Rakuten is Wirecard Bank AG Einsteinring 35, 85609 Aschheim, Phone: +49 (0) 89 - 4424-2000, Fax: +49 (0) 89 - 4424-2100, info@wirecardbank.de.
- 6.9.2. Due to the regulations for the processing of credit card payments, Rakuten is obliged to inform and obligate the merchant according to the following regulations.
- 6.9.3. Rakuten is entitled to refuse individual merchants from carrying out end user credit card payments. Reasons are
 - an increased volume of expected chargebacks,

- a violation of the merchant against the regulations or applicable law,
- lack of liquidity of the merchant.

6.9.3.1. The merchant agrees to comply with the regulations of the credit card organization Mastercard. He can see these anytime at www.mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf.

6.9.3.2. The merchant acknowledges that the credit card organizations are the sole and exclusive holders of the credit card trademarks. The Merchant also undertakes not to deny ownership of these Trademarks for any reason and acknowledges that the credit card organizations may prohibit its use of the Trademarks at any time, with immediate effect and without notice and any reason.

6.9.3.3. The Merchant acknowledges the right of the credit card organizations to enforce all provisions of the Regulations and to prohibit them from behaving in any way that they consider cause or threaten damage to the credit card companies, including damage to their reputation, or adversely affect the integrity of the payment system and / or the confidentiality of credit card information as defined in the regulations.

6.9.3.4. The Merchant undertakes not to do anything that may prevent or impair the exercise of this right by the credit card organizations.

6.9.3.5. The merchant may not require a cardholder to waive a right to challenge a transaction.

6.9.3.6. Rakuten is entitled to carry out regular or case-based reviews of merchants' systems and business premises.

7. PRICING AND PAYMENT

7.1. Merchant shall pay to Rakuten the "Fees" set out in the Pricing and Payment Annex according to the payment schedule and on the payment terms set out in the Pricing and Payment Annex, which is expressly incorporated into this Agreement by reference.

7.2. Rakuten shall in its sole discretion be entitled to change the Pricing and Payment Annex from time to time. Rakuten shall give Merchant reasonable notice of any material change. Any changes to the Pricing and Payment Annex shall apply to future use by Merchant of the Services.

7.3. Rakuten shall be entitled to set off any sums owed by Merchant to Rakuten, including any sums owed virtue of a breach of this Agreement, against any payments owed by Rakuten to Merchant.

7.4. Rakuten is authorized by Merchant to collect the fees from his bank account and Merchant has to provide all necessary data and documents like valid bank information and SEPA Mandate. Merchant must secure that the bank account has enough money on it that Rakuten can charge all necessary fees and amounts.

7.5. Rakuten can stop payments immediately without prior notice to Merchant, if the bank account is not valid or if Rakuten receives a chargeback. If Rakuten concludes that Merchants actions and/or performance in connection with this Agreement may result in customer disputes, chargebacks or other claims, then Rakuten may, in its sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to Merchant under this Agreement for the shorter of: (a) a period of ninety (90) days following the initial date of suspension; or (b) completion of any investigation(s) regarding Merchants actions and/or performance in connection with this Agreement. If Rakuten determines that Merchants account has been used to engage in fraud or other illegal activity, then Rakuten may, in its sole discretion, permanently withhold remittances and payments. You agree that Rakuten is entitled to the interest, if any, paid on balances in all of Rakuten's bank accounts, even though some of that interest may be attributable to the time taken for the exercise of the rights, and the performance of the obligations, under this Agreement.

7.6. Except as provided otherwise, all amounts contemplated in this Agreement will be expressed and displayed in the Local Currency, and all payments contemplated by this

Agreement will be made in the Local Currency of the used Marketplace.

8. RAKUTEN POLICIES

- 8.1. The Rakuten Policies are designed to create a safe and trusted Marketplace for all users from Rakuten.
- 8.2. Merchant is expected to review, understand and comply with all Rakuten Policies, provided for Merchant, as well as all laws, rules, regulations, codes and standards imposed by any governmental, regulatory or self-regulatory body applicable to the use of the Services.

9. MERCHANT'S OBLIGATIONS

- 9.1. Merchant is solely responsible for promptly fulfilling all Transactions and all matters related to Merchants use of the Services. Merchant hereby indemnifies Rakuten and all members of the Rakuten Group and hold them harmless in respect of any third party claim arising out of or in any way related to Merchant's use of the Services.
- 9.2. Merchant shall comply with all laws applicable to its use of the Services, including applicable data protection, tax, environmental, import, customs and consumer protection laws.
- 9.3. In particular, Merchant is solely responsible for all dealings with Buyers and the Merchant's Marketplace Presence, and shall comply with the abovementioned laws in the hiring and execution of the corresponding contract with Buyers and shall provide Buyers, with all necessary contractual and pre-contractual information pursuant to applicable law, including without limitation information regarding the main characteristics of the Products offered, its total price, the shipping costs, etc. Merchant shall comply with the [Rakuten Policies](#), which are expressly incorporated into this Agreement by reference.
- 9.4. Rakuten shall be entitled to review Merchant's Marketplace Presence before its launch to check compliance with this Agreement and the Rakuten Policies. Rakuten shall be under no obligation to allow Merchant's Marketplace Presence to launch. Rakuten's allowing of Merchant's Marketplace Presence to launch shall in no way

be or imply any endorsement, approval, confirmation of compliance with law, or warranty in respect of Merchant or its Marketplace Presence.

- 9.5. Rakuten shall be entitled to request reasonable changes to Merchant's Marketplace Presence before or after its launch.
- 9.6. Merchant shall maintain complete and accurate business records of all Transactions and dealings with Buyers. Rakuten shall be entitled to audit such records, at Rakuten's expense, upon reasonable written notice.
- 9.7. Merchant shall not solicit or encourage Buyers to purchase Products other than via the Services. This Clause does not prevent Merchant concluding a sale through another sale channel if the relevant Buyer independently contacts the Buyer through such alternate sales channel.
- 9.8. Merchant warrants that it can and will communicate with Rakuten in English or such other languages as accepted by Rakuten. Merchant warrants that it will communicate with Buyers in the official languages of any jurisdiction in which Merchant makes available Products to Buyers on a Rakuten Marketplace in this country.
- 9.9. Merchant shall respond promptly, and in any event within two (2) Business Days, to any communications sent by Rakuten to Merchant.
- 9.10. Merchant shall inform Rakuten immediately about any changes in the Merchant Account Information.

10. INTELLECTUAL PROPERTY

- 10.1. As between the parties, all right, title and interest in the Services, including all Intellectual Property Rights, is and shall remain with Rakuten. Rakuten grants Merchant a limited, personal, world-wide, revocable, royalty-free licence to use such Intellectual Property Rights for the sole purpose of Merchant's use of the Services. Merchant shall not hold itself out or imply in any way that it is associated with, endorsed by or otherwise connected with Rakuten or the Rakuten Group.
- 10.2. As between the parties, all right, title and interest in any content provided by Merchant via the Services, including

all Intellectual Property Rights, is and shall remain with Merchant. Merchant grants Rakuten a limited, world-wide, revocable, royalty-free, sublicenseable licence to use such Intellectual Property Rights and modify any such content for the sole purpose of providing and promoting the Services.

10.3. Merchant warrants, represents and undertakes that it is legally entitled to grant the licence above. Merchant hereby indemnifies Rakuten and all members of the Rakuten Group and hold them harmless in respect of any of third party claim arising out of or in any way related to a breach of this warranty, representation and/or undertaking.

10.4. For the purposes of this Agreement, "Intellectual Property Rights" means any rights, title and interest in patents, trademarks, service marks, trade and business names, rights in design, utility models, copyright, database rights, know-how (including trade secrets and confidential information) and any other similar right whether presently existing, applied for or in relation to which there is a right to apply for registration and any analogous rights to any of the preceding rights under any other jurisdiction.

11. DATA PROTECTION

11.1. Other members of the Rakuten Group may be co-controllers in respect of Buyer Data. The following clauses apply as between the parties.

11.2. Where Merchant processes Buyer Data on behalf of Rakuten or any Rakuten Group member, Merchant shall, in respect of such Buyer Data:

11.2.1. act only on instructions and directions from Rakuten and shall comply promptly with all such instructions and directions received from Rakuten from time to time;

11.2.2. not process Buyer Data for any purpose other than for the fulfilment of Transactions and only to the extent reasonably necessary for the performance of this Agreement;

11.2.3. not disclose Buyer Data to any employee, director, agent, contractor or affiliate of Merchant or any third

party except as necessary for the fulfilment of Transactions, to comply with law or with the Data Subject's or Rakuten's prior written consent;

11.2.4. comply with Rakuten's Privacy Policy;

11.2.5. implement all necessary or appropriate technical and organisational measures to protect:

(a) the security and confidentiality of Buyer Data processed by it; and

(b) Buyer Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, access, or processing; and

11.2.6. notify Rakuten of any request made by a Data Subject to access, amend or delete Buyer Data processed by Merchant on behalf of Rakuten and, if required by Rakuten, permit Rakuten to handle such request and at all times cooperate with and assist Rakuten in relation to such Data Subject requests.

11.3. Merchant shall, as soon as reasonably practicable in the circumstances and in any event within two (2) calendar days of becoming aware, promptly notify Rakuten in writing of any actual or suspected unauthorised access or processing of Buyer Data, and such notice shall include reasonable details of such actual unauthorised access or processing or the breach of relevant Rakuten Policies relating to handling of Buyer Data.

11.4. Merchant shall cooperate and provide Rakuten with such reasonable assistance as Rakuten requires in relation to any complaints made by Data Subjects or investigations or enquiries made by any regulator relating to Merchant's or Rakuten's obligations under applicable data protection laws.

11.5. Any Merchant Personal Data held by Rakuten or any member of the Rakuten Group will be processed in accordance with the Privacy Policy.

12. CONFIDENTIALITY

12.1. In this Agreement, "Confidential Information" means:

12.1.1. this Agreement, and in respect of each party, all information and data of whatever nature whether disclosed orally, in writing or by any other means which relates to a party's (or any group company's) trade secrets, know-how, research, developments, technical and business information relating to products, methods and processes, suppliers, existing or potential customers and personnel whether or not designated as confidential information but which by its nature is confidential; and/or

12.1.2. information designated as confidential or commercially sensitive or which might reasonably be considered as such.

12.2. Each party (the "Recipient") undertakes at all times during the term and thereafter to maintain and procure the maintenance of the Confidential Information of the other party (the "Provider") confidential and keep and procure the keeping of it secure and protected against theft, damage, loss or unauthorised access and shall not, directly or indirectly, use or authorise or permit the use, copy or disclosure of the same or any part thereof except:

12.2.1. insofar as may be necessary for the proper fulfilment of its obligations under, or receipt of the benefit of, this Agreement; or

12.2.2. to disclose the terms to its professional advisers, agents or representatives for the purpose of obtaining professional advice.

12.3. The obligations contained in Clause 9.2 shall not apply to Confidential Information which:

12.3.1. is in or comes into the public domain (otherwise than in breach of this Agreement);

12.3.2. the Recipient receives from an independent third party having the right to disclose the same;

12.3.3. the Recipient can show was in its possession by being recorded in its files or records prior to the date of receipt from the Provider; or

12.3.4. the Recipient is required to disclose by law.

12.4. Notwithstanding Clause 9.2, Rakuten shall be entitled to disclose Confidential Information of the Merchant to:

12.4.1. any member of the Rakuten Group; and

12.4.2. to any supplier to the Rakuten Group engaged in providing the Services to Merchants.

12.5. Each party shall immediately upon becoming aware of the same, give notice to the other of any unauthorised disclosure, misuse, theft or other loss of Confidential Information of the other party, whether inadvertent or otherwise.

12.6. Upon request from the Provider or on termination of this Agreement, the Recipient shall return or destroy (as directed) any and all Provider Confidential Information then in its possession or control.

13. INDEMNIFICATION

Merchant hereby indemnifies Rakuten and all members of the Rakuten Group and holds them harmless in respect of any third party claim arising out of or in any way related to a breach of its obligations in this Agreement, the products offered on the Rakuten Marketplaces, the materials, and any actual or alleged infringement of any intellectual property rights. Merchant will use counsel reasonably satisfactory to Rakuten to defend each indemnified claim. If at any time Rakuten reasonably determines that any indemnified claim might adversely affect Rakuten, Rakuten may, to the extent permitted by applicable law, take control of the defence at Rakuten's expense.

14. DISCLAIMER

Rakuten Marketplaces and Sites and the Service, including all content, software, functions materials and information made available on or provided in connection with the Services, are provided "as-is". As a user of the Services, Merchant uses the Rakuten Marketplaces and, the Services and the Rakuten Merchant Backend or any other tool provided by Rakuten to help the Merchant participate in the Services at Merchants own risk except for those Services where Rakuten explicitly takes the risk.

15. LIMITATIONS OF LIABILITY

15.1. Other than those expressly given in this Agreement, Rakuten disclaim any and all warranties in respect of the Services, including in respect of their accuracy, availability, quality, performance, title, fitness for purpose or performance.

15.2. Nothing in this Agreement shall limit or exclude either party's liability:

15.2.1. for any loss to the extent it is caused by fraud, dishonesty or deceit;

15.2.2. for wilful default or gross negligence;

15.2.3. for death or personal injury caused by its (or its agents') negligence;

15.2.4. that may not otherwise be limited or excluded by law.

15.3. Except as set out in Clause 14.2, each party will only be liable for direct damages arising in relation to this Agreement and neither party, nor any member of the Rakuten Group, will be liable whether based on a claim in contract, tort (including negligence), under an indemnity, breach of statutory duty or otherwise arising out of, or in relation to, this Agreement, for:

15.3.1. any loss of profit (whether direct or indirect);

15.3.2. loss of goodwill;

15.3.3. loss of further business; or

15.3.4. any indirect or consequential losses (including where such loss or damage is of the type specified in Clauses 14.3.1 - 14.3.3).

15.4. Except as set out in Clause 14.2, Rakuten's/any party's total aggregate liability to Merchant whether based on an action or claim in contract, tort (including negligence), breach of statutory duty or otherwise arising out of, or in relation to, this Agreement, will be limited to 100% of the Fees paid or payable by Merchant to Rakuten in the one (1) calendar year immediately prior to the claim(s).

15.5. The limitations and exclusions of liability above will not apply in respect of the following:

15.5.1. any indemnity expressly granted under this Agreement;

15.5.2. the obligation of Merchant to pay undisputed Fees which have already become due; or

15.5.3. losses, fines and expenses imposed by a regulator.

15.6. Each party shall use reasonable endeavours to mitigate loss which, for the avoidance of doubt, shall apply to any losses within the scope of any indemnity under this Agreement.

16. TAX MATTERS

As between the parties, Merchant will be responsible for the collection and payment of any and all of Merchants Taxes or Fees together with the filing of all relevant returns, such as VAT, VIES and Intrastat returns and issuing VAT invoices/credit memos where required. Rakuten is not responsible for collecting, remitting or reporting any VAT or other taxes arising from such sale. Unless stated otherwise, any and all fees payable by Merchant pursuant to this Agreement are exclusive of all value added, sales, use and similar taxes, and Merchant will pay any taxes that are imposed and payable on such amounts. If Rakuten is required by law or by administration thereof to collect any value added, sales, use or similar taxes from Merchant, Merchant will pay such taxes to Rakuten.

Merchant shall identify and mark every product in the Rakuten System which will be shipped from outside the EEA; Rakuten can display this shipment and all possible additional Taxes or Fees to the customer.

17. TERM AND TERMINATION

17.1. This Agreement shall commence on the Account Open Date until terminated in accordance with this Agreement.

17.2. This Agreement shall automatically terminate upon the date of termination or expiry of the Payment Services Terms.

17.3. Any party may terminate this Agreement:

17.3.1. for convenience on one (1) clear calendar month notice prior written notice; or

17.3.2. if the other becomes bankrupt or is otherwise placed into administration or liquidation (or equivalent) or is unable to meet its debts as and when they come due.

17.4. Without prejudice to any other rights or remedies, Rakuten may terminate this Agreement immediately:

17.4.1. if Merchant is in material breach of the Agreement (or is in multiple breaches which taken together are material) and does not remedy such breach(s) within seven (7) days of being put on written notice;

17.4.2. if Merchant does not respond to Rakuten communications promptly, and in any event within two (2) calendar weeks;

17.4.3. if the Merchant does not comply promptly with the reasonable instructions of Rakuten in relation to its Marketplace Presence and/or Account; or

17.4.4. if required by law; or

17.4.5. if there is a material change in the Merchant's identity, ownership or nature of the Products that they offer to Buyers.

17.5. Upon termination or expiry of this Agreement for any reason:

17.5.1. all outstanding debts owed to Rakuten by Merchant shall become immediately due and payable;

17.5.2. Merchant shall:

(a) cease all processing of and return any Buyer Data to Rakuten; and

(b) pay any outstanding Fees due to Rakuten within fourteen (14) calendar days of the termination; and

17.5.3. unless Rakuten is at fault, no Rakuten Group member shall be responsible for any losses incurred by Merchant as a result of termination of this Agreement.

18. DISPUTE RESOLUTION

18.1. Merchant shall be responsible for handling and resolving all disputes between Merchant and Buyers.

18.2. Rakuten shall be entitled to provide Merchant's details to Buyers or third parties if reasonably necessary for the resolution of a dispute.

18.3. The construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be governed by the laws of Luxembourg.

18.4. Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of Germany over any claim or matter arising under or in connection with this Agreement.

19. ASSIGNMENT / SUB-CONTRACTING

19.1. Merchant shall not assign, novate, sub-licence, mortgage or otherwise transfer ("Transfer") or sub-contract in whole or in part any of its rights and/or obligations under this Agreement without the prior written consent of Rakuten.

19.2. Rakuten may in whole or in part:

19.2.1. Transfer any of its rights and/or obligations under this Agreement to another member of the Rakuten Group or to any person to whom Rakuten is selling all or substantially all of its business; and/or

19.2.2. sub-contract any of its rights and/or obligations under this Agreement.

20. MISCELLANEOUS

20.1. This Agreement (including all terms incorporated into it by reference) contains all the terms agreed between the parties regarding the subject matter and supersedes and replaces any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement and both parties expressly acknowledge that they have not relied upon any representation, undertaking or promise that is not recorded in this Agreement.

20.2. Rakuten shall be entitled to vary this Agreement, the Pricing and Payment Annex and the Rakuten Policies. If it does, Rakuten shall give Merchant reasonable notice of material changes. Any changes to these documents shall apply to future use by Merchant of the Services.

20.3. Any notices sent to the email detail held on Merchant's Account shall be deemed to have been received 24 hours after the time sent. Any notices sent by first class post to the address held on Merchant's Account will be deemed to have been received on the next Business Day. Any notices provided via Merchant's Account will be deemed to have been received by Merchant the next time Merchant uses the Services.

20.4. This Agreement is expressly intended to benefit all members of the Rakuten Group. Other than that, no third party is intended to benefit from this Agreement.

20.5. Each provision of this Agreement is severable and distinct from the others. The parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any such provision is or at any time becomes to any extent invalid, illegal or unenforceable under any enactment or rule of law, it shall to that extent be deemed not to form part of this Agreement but (except to that extent in the case of that provision) it and all other provisions of this Agreement shall continue in full force and effect and their validity, legality and enforceability shall not be affected or impaired as a result, subject to the operation of this clause not negating the commercial intent and purpose of the parties under this Agreement.

20.6. No provision of this Agreement creates a partnership between the parties or makes a party the agent of the other party for any purpose. A party has no authority to bind, to contract in the name of or to create a liability for the other party in any way or for any purpose and neither party shall hold itself out as having authority to do the same.

20.7. The parties agree to electronic contracting.

20.8. Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed as nor

shall be deemed to be a waiver of that party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice that party's right to take subsequent action.

20.9. If any party is affected by a force majeure event under this Agreement it shall immediately notify the other parties in writing of the matters constituting the force majeure event and shall keep the other parties fully informed of their continuance and of any relevant change of circumstances whilst such force majeure event continues. The party affected by a force majeure event shall take all reasonable steps to minimise the effects of the force majeure event on the performance of its obligations under this Agreement. No party shall be in breach of this Agreement, or otherwise liable to the other, by reason of any delay in performance, or non-performance of any of its obligations due to a force majeure event. If any force majeure event persists for more than ninety (90) calendar days, then any party may terminate this Agreement on written notice, save that Merchant may not terminate unless and until outstanding Fees have been paid.

The parties shall each bear their own costs, taxes and expenses of entering this Agreement and providing and receiving the Services.

Rakuten Deutschland GmbH

Geisfelder Str. 16

96050 Bamberg

Germany

RAKUTEN POLICIES

DATE: September 2018

OVERVIEW

The Rakuten Policies are designed to create a safe and trusted Marketplace for all our users.

You are expected to review, understand and comply with all Rakuten Policies, provided for you, as well as all laws, rules, regulations, codes and standards imposed by any governmental, regulatory or self-regulatory body applicable to the use of our services.

Our Rakuten Policies are updated frequently to address emerging issues, so it is important that you check them regularly for changes.

Make sure you follow these guidelines. If you don't, you may be subject to a range of actions, including without limitation limits on your Account privileges and suspension of your Account.

General Policies

These rules are designed to protect you when you are buying and selling on Marketplace and apply to all Marketplace users

A. Acceptable Use Policy

The Policy explains usage of the Marketplace and the Services.

B. Information Security Policy

The Policy explains the usage of Merchants Accounts and necessary security measures to keep all data and information safe.

C. Shop Review Policy

The Policy is about the Shop Reviews which can be done by the Buyers.

D. Anti-Money Laundering Policy

E. Prohibited and Restricted Item Policy:

This policy lists items which cannot be Listed. The Policy also lists items which are not prohibited but

which, because they are controversial or sensitive in nature, have restrictions attached. Please make sure that you read our Prohibited and Restricted Items policy before listing any item for sale on Marketplace

F. Listings:

This policy sets out what is and isn't allowed in Listings. These include guidelines on how certain items may be listed and described, restrictions on the use of profanity, HTML and JavaScript, and links. Please make sure that you read our Listing Policy before Listing any item for sale on Marketplace

G. Order Fulfilment:

We expect our Merchants to provide an excellent customer service from beginning to end. To help Merchants meet our minimum performance standards, this policy outlines the basic requirements we expect regarding selling practices. For example, acceptable postage charges and expected dispatch times. Please make sure that you read our Order Fulfilment Policy before Listing any item for sale on Marketplace.

H. Refunds and Returns:

This policy outlines the basic requirements we expect from our Merchants and their Buyers in relation to returns and refunds. For example, responses to return requests, expected return deadlines and refunds of postage charges. Please make sure that you read our [Refunds and Returns Policy](#) before using Marketplace.

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ACCEPTABLE USE POLICY

DATE: September 2018

The Rakuten Policies are designed to create a safe and trusted Marketplace for all our users.

You are expected to review, understand and comply with all Rakuten Policies as well as all laws, rules, regulations, codes and standards imposed by any governmental, regulatory or self-regulatory body applicable to the use of our services.

This Acceptable Use Policy describes prohibited users of Marketplace and our related or ancillary services ("Services"). The examples described in this Acceptable Use Policy are not exhaustive.

Your use of Marketplace and our Services

- The use of Marketplace and our Services is limited to Buyers and Merchants that can lawfully enter into contracts under the laws of their respective country of residence.
- Minors under 18 years old can only use Marketplace and our Services with the prior consent of their parent or guardian.
- Minors must refrain from buying or selling items that are restricted to adults (e.g. 18 certificate video recordings or alcohol). Merchants must not deliver age restricted items (e.g. 18 certificate video recordings or alcohol) to minors.
- You may not buy or sell any Prohibited or Restricted Items. You are solely responsible for checking whether any such restrictions apply to the items you intend to buy or sell.
- We have the right in our sole discretion to determine the content, appearance, design, functionality and all other aspects of Marketplace and our services.
- You are prohibited from making any commercial use of Marketplace or our services, otherwise than, in the case of Merchants, as provided for in the Merchant Terms and Conditions.

Your Account

- Unless agreed by us in writing in advance, you may not register for more than one Account.
- You warrant that you will keep all of your information in your Account and Marketplace Presence (if applicable) up-to-date and ensure that it is accurate and not misleading.
- At all times you are responsible for the safety and security of your Account. In the event that your Account and/or secure details are compromised you must immediately change them. You accept sole responsibility for any use of (whether authorised or not) of your Account.
- You may not transfer your Account to another party without our prior consent.

General conduct and behaviour

- You must not use, encourage, promote, facilitate or instruct others to use, Marketplace or any of our Services for any activity that is illegal (e.g. advertising, transmitting, or otherwise making available gambling sites or services or disseminating, promoting or facilitating child pornography); harmful (e.g. offering or disseminating fraudulent goods, services, schemes, or promotions (e.g., ponzi and pyramid schemes, phishing, or pharming) or utilising computer technology that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data (e.g. viruses or Trojan horses); or offensive.
- You must not use Marketplace or any of our Services to send, store, display, distribute or otherwise make available any material that is illegal, misleading, false, defamatory, obscene, offensive, menacing, otherwise injurious or in breach of third parties' privacy or any Intellectual Property Rights.
- You must not distribute, publish, send, or facilitate the sending of unsolicited mass e-mail or other messages, promotions, advertising, or solicitations (like "spam"), including commercial advertising (including URLs for

websites other than those of Marketplace) and informational announcements. You will not alter or obscure mail headers or assume a sender's identity without the sender's explicit permission. You will not collect replies to messages sent from another internet service provider if those messages violate this Policy or the acceptable use policy of that provider.

- You must not do or omit to do anything that causes Marketplace or any of our Services to be interrupted, damaged or impaired.
- You agree that you will not take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure.
- You may not purchase your own Listings or work in concert with other Buyers or Merchants to manipulate the outcome of a sale or Listing.

Intellectual property

- We're committed to providing a safe and trusted Marketplace and protecting Intellectual Property Rights. Using ours or someone else's intellectual property or other proprietary right, in an unlawful way, is considered infringement, which is against the law and our Policies.
- Rakuten, Marketplace, Rakuten Advertising, Super Points, and other trademarks appearing on Marketplace or in any of our Services (including without limitation graphics, logos, page headers, button icons, scripts and service names) are the trademarks of the Rakuten Group and may not be used in connection with any item or service that is not the Rakuten Group's, in any manner that is likely to cause confusion among Buyers, or that disparages or discredits any member of the Rakuten Group.
- You should assume that everything you see or read is copyrighted, including trademarks not owned by the Rakuten Group that appear on Marketplace, which are the property of their respective owners, who may or may not be affiliated with, connected to, or sponsored

by us.

- To report any Intellectual Property Right infringement, please contact us rechtsabteilung@rakuten.de.
- For the purpose of this Policy, "Intellectual Property Rights" means any rights, title and interest in patents, trademarks, service marks, trade and business names, rights in design, utility models, copyright, database rights, know-how (including trade secrets and confidential information) and any other similar right whether presently existing, applied for or in relation to which there is a right to apply for registration and any analogous rights to any of the preceding rights under any other jurisdiction.

Violations of this Policy

- You are responsible for all electronic communications and content sent from your computer, Marketplace Presence or communications centre, as applicable.
- In the event that you become aware of any breach of this Policy or notice any content or material that you believe may be in breach of this Policy, you agree to notify us immediately and provide us with assistance, as requested, to stop or remedy the breach.
- To report any violation of this Policy, please contact us rechtsabteilung@rakuten.de.

A. INFORMATION AND SECURITY POLICY

DATE: September 2018

Security Advice

At Rakuten the security of your transactions and personal information is our priority.

Please take a moment to read the following information and advice to ensure that your online shopping or selling experience is as safe and secure as possible.

Secure Socket Layer (SSL)

We use Internet standard encryption technology SSL to encrypt personal data that you send to us when placing an order through the website using VeriSign SSL Certificates.

Rakuten Merchant Account

Password

- Use at least 10 characters
- Ensure your password is complex; combination of upper and lower case letters, numbers symbols

Don't use personal information that others can easily guess e.g. name of pet/family member, DOB etc. You are responsible for maintaining the confidentiality of your account.

- Use different passwords for all your website accounts
Using the same username/password combination on different website/email accounts could give someone access to all your accounts if that data was compromised. Please ensure you use different passwords on all online accounts.

If you believe someone has compromised your account details, change your password immediately.

Suspicious emails/Phishing

Unfortunately, Cyber Criminals use techniques out of our control such as undertaking phishing/spoofing attacks.

These attacks are used to obtain sensitive information such as your username and password by masquerading as a trustworthy entity, or by placing spyware on your computer

to steal your identity.

Spoof emails can look very similar to genuine emails although they sometimes look suspicious due to;

- Spelling mistakes and bad grammar
- Format – different layout to the usual Rakuten.es emails
- Hovering cursor over the links reveals a totally different URL (website address) to Rakuten.es
- Asking for additional information such as payment/bank account details

Rakuten.es or Merchants will **never** ask you for your Payment Card details, Bank account details or Rakuten.es account password via email.

If you receive an email which appears to be spoofed, do not click on any of the links, but forward the email as an attachment to information-security@rakuten.de. By attaching the email as an attachment (rather than just simply forwarding the email) we can trace the origin of the email from the header information.

Connecting to the Rakuten websites

Public computers

Always log out of your Rakuten Merchant Account when you've finished shopping, and then close down your browser to remove temporary internet cookies associated with your visit.

B. CUSTOMER REVIEWS POLICY

DATE: September 2018

Terms defined in the Agreement shall have the same meaning in this Rakuten Policy.

1. We provide a platform for Buyers to express their opinion via our review mechanism.
2. Review follows a star rating system, five stars being highest and one star being the lowest. Buyers can rate each transaction and can also leave a short comment.
3. Any review, or star rating left about a Merchant must be bona fide. Buyers should give Merchants every chance to resolve a complaint before leaving a critical rating.
4. Buyers must remain courteous to others at all times during their use of the shop review mechanism.
5. Review must be focused on the buying experience (e.g. were you happy with how your order was packaged and delivered? Did the Merchant provide a good customer experience? Did the Merchant provide a prompt resolution in respect of any issue raised? Would you buy from the Merchant again?).
6. Buyers and Merchants must not use the shop review system to abuse the system for unfair trade; to influence or coerce the other for the own beneficial act; to solicit or encourage a purchase or sale outside Marketplace or otherwise than through the Services, or to influence any other Buyer or Merchant to act in a way that would breach any terms of their Agreement with us.
7. Merchants are expressly prohibited from leaving shop review about themselves, or any item offered for sale by them on Marketplace. Improper use or manipulation of the shop review system by Merchants will not be tolerated. We reserve the right to suspend or terminate a Merchant's account immediately if we have reasonable grounds to believe that they have directly or via a third party manipulated shop reviews.
8. Merchant has the duty to give us evidence about the correctness of a review (i.e. invoice about the order, delivery address, proof of delivery).
9. Over time, Merchants will develop a score, showing what their average star rating has been to a maximum of 5. A Merchant's live average star rating will be shown clearly in the Merchant summary section of their shop. High Merchant shop review scores demonstrate a high quality Marketplace Presence.
10. We may suspend or terminate a Merchant's Marketplace Presence and/or access to the Services, if their shop review score drops below 4.00 stars and fails to recover within a reasonable timeframe. We reserve the right to determine the reasonable timeframe in our sole discretion.
11. We reserve the right to remove shop review in our sole discretion, including without limitation if the shop review:
 - isn't directly related to the buying experience;
 - relates to a review of the item (shop review is to rate the services of the Merchant, not the item). Product reviews should be left against a purchased product via the My Orders page
 - relates to a complaint about the price of the item;
 - contains content of a promotional nature such as comments about or links to other merchants or websites;
 - contains swearing, obscene or abusive language;
 - contains personal information; or
 - is irrelevant or does not make sense.
12. If a Merchant considers shop review left by a Buyer to be untrue or it contains an offense, they can request for it to be removed by contacting Merchant Helpdesk
13. All reviews, feedback and ratings may be published on Marketplace, made available for viewing by other Buyers and Merchants and syndicated to other websites and publications of the Rakuten Group. Shop review

may be displayed for as long as we consider appropriate.

14. Buyers and Merchants agree not to hold us responsible for any shop review or ratings published on Marketplace, hold us harmless against any claim or action brought by third parties arising out of or in connection with any shop review posted by them and release us from and waive all rights against us in respect of any liability arising out of or in connection with the publication of any comments about them in the shop review and rating system.
15. Merchant is not allowed to give any discount or benefits to the Buyer to get positive reviews.
16. All reviews are property of Rakuten and only usable in combination with the Rakuten Marketplace Presence.
17. Merchants has to ask every Buyer for a review or none; he is not allowed to ask only special or picked out Buyers for a review.

D. ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING POLICY

DATE: September 2018

Rakuten provides Marketplaces, Services and Payment Services. Merchant has to comply with all regulations. Therefore it is necessary for Rakuten to collect some documents to identify the contract partner and maybe also to transfer these documents to its Payment Service Partner(s). Merchant shall send all necessary documents if requested to Rakuten (i.e. Commercial Registration documents, Registration Number, list of shareholders, video identification with ID-card for sole traders or beneficial owners, special request form about Anti Money Laundering, Articles of Association, business registration form, etc.).

Termination

Rakuten may terminate the contract with immediate effect in the event circumstances have changed (including, without limitation, change in regulation or law, or change in ownership of the Merchant or any of its affiliates) such that Rakuten performance of any part of the Contract would be illegal or otherwise unlawful.

Rakuten can also suspend the Merchant Account and take the Marketplace Presence offline, if not all requested documents were sent.

E. PROHIBITED AND RESTRICTED ITEMS POLICY

DATE: September 2018

This Rakuten Policy comprises two sections: **Prohibited Items** and **Restricted Items**.

Merchants may not list any Prohibited Items and may only sell Restricted Items under the conditions stated. Merchants are expected to conduct proper research to ensure that all content posted on Marketplace and all items Listed for sale on Marketplace are in compliance with this Rakuten Policy and all Applicable Laws.

If we determine that the content of any Listing is prohibited, in violation of intellectual property rights, potentially illegal, or inappropriate, we reserve the right to remove or alter it in our sole discretion. We reserve the right to determine the appropriateness of content posted on Marketplace.

Failure to comply with the terms of this Rakuten Policy may result in the cancellation of your Listing(s), and/or the suspension of your Marketplace Presence and/or the Services.

Terms defined in the Merchant Terms and Conditions shall have the same meaning in this Rakuten Policy.

Prohibited Items

Merchants must not sell and Buyers must not buy any of the following types of items:

- **Medicines:** Prescription only medicines, pharmacy only medicines, GSL (General Sales List) medicines, herbal medicines and veterinary medicines **are prohibited**.
- **Illegal drugs:** including all associated paraphernalia.
- **Tobacco:** cigars, cigarettes, tobacco or nicotine substitution, herbal cigarettes and herbal smoking mix are prohibited if they contain tobacco or nicotine. Other nicotine-based products are prohibited unless approved by the relevant authority as aids to smoking cessation. Any tobacco-based product **is prohibited**.
- **Animal or Human products:** Human parts or remains. Used underwear. Live animals. Parts or products from whale, dolphin, shark, elephant (including elephant ivory) or from any other regulated endangered or protected plant or animal **are prohibited**.
- **Plants, plant material and seed:** Certain types of plants, seeds and other plant material **are prohibited or regulated** to ensure they are safe for pets, humans and the environment. Merchants must seek advice from appropriate government authorities before (a) exporting, importing, receiving or transporting such agricultural or plant material, and (b) selling seed, as marketing regulations apply and licensing may be required (e.g. for vegetable and grass seed).
- **Hazardous and controlled substances:** including without limitation lead based paints, items containing mercury and items that contravene any provision of REACH (Registration, Evaluation, Authorisation & restriction of Chemicals) or are restricted under Annex XVII of the REACH Regulation.
- **Weapons or items that could be construed as a weapon:** including without limitation disguised knives such as belt buckle knives, air gauge knives and pocket knives; stealth, throwing, ballistic and rubber knives; hunting knives; bladed weapons such as switchblade, spring-blade, snap-blade, gravity, stiletto and butterfly knives; martial arts training knives; blow guns and blow pipes; crossbows; dart guns; disguised stun guns; flares; electric stunning devices and tasers; spear guns; explosives; nun chucks; throwing stars; knuckle dusters; daggers and swords.
- **Fireworks, firearms and ammunition:** including without limitation firecrackers, imitation BB guns and air rifles.
- **Pornographic, Obscene or Offensive materials:** including images that portray nudity in a gratuitous or graphic manner but excluding adult DVD's which are not obscene or offensive.
- **Government and official documents and uniforms:** including without limitation passports, driving licenses, birth certificates and qualification certificates.

- **Items that infringe upon an individual's privacy:** items that infringe upon, or have potential to infringe upon, an individual's privacy are prohibited.
- **Advertisements:** Listings that are intended wholly or mainly as "portals" to commercial or private websites for the purposes of advertising, or that offer contact information for non-Marketplace offers.
- **Items that could encourage illegal activity:** including without limitation lock picking devices, unlocking software and "codes" that can be used to access content on other websites or platforms. We reserve the right to determine the appropriateness of content posted on Marketplace.
- **Products that are not safe:** Products subject to a product safety recall, regardless of branding. All new toys and electrical equipment must be CE marked, must be tested by an expert prior to listing to verify that they are safe (that is, there is no risk that the toy or equipment will cause death, personal injury or damage to property) and, where applicable, must come with a Spanish standard plug.
- **Illegal and potentially illegal products: including without limitation** items that cannot be lawfully shipped or sold in Germany or the Buyer's countries of residence; unauthorised replicas, counterfeit items or unauthorised copies; stolen goods (any items obtained via unlawful means); items that infringe a third party's intellectual property rights; promotional or advanced copies of media items; personal information and mailing lists; and items whose sale, distribution, offering, import or export is prohibited or restricted by any Applicable Laws, the Buyer's country of residence, the Merchant's country of domicile or any other country where delivery takes place.

Restricted Items

Merchants wishing to sell any of the following types of items must comply with the applicable conditions set out below:

- **Toys:** all Listings for toys (defined in European Directive 2009/48/EC as an item intended for use in play

by anyone under 14 years of age) must (i) replicate any warning information featured on that toy, and on any label, packaging and instructions for use accompanying that toy; and (ii) include all age restriction notices, warning notices or other information required by Applicable Law.

- **Age restricted items:** The following types of items must not be sold by a Merchant unless the Buyer is aged 18 or over, and must not be bought by a Buyer unless they are aged 18 or over. Merchants are expected to implement age verification checks on delivery, where appropriate, to ensure that they are in compliance with this Rakuten Policy and all Applicable Laws at all times:
 - **Items marked with an 18+ certificate:** including without limitation DVDs and games;
 - **Adult material:** including without limitation items containing nudity or images or contents of a sexual nature that are unsuitable for a family audience;
 - **Alcohol** including products containing alcohol;
 - **Food supplements, weight loss and slimming aids** which are subject to legal age restrictions;
 - **Intoxicating substances:** including without limitation lighter fuel/fluid, solvent based glues and adhesives and paints, aerosols and anti-freeze;
 - **Flammables:** including without limitation butane gas and fluid cigarette lighter refills; and
 - **Sharp objects:** including without limitation kitchen knives, hobby craft knives, utility knives, axes, razor blades and power saws.
- **Media items that contain a 12, 14, 16, 18 (or equivalent) certificate:** e.g. DVDs, games etc... must include (i) an Age Verification Flag; and (ii) and any other warnings or other information required by Applicable Law.
- **Intoxicating Substances and Flammables** (see

above for examples): all Listings must include (i) any warning information featured on the Product; (ii) a warning notice that the product is not intended for use by children; and (iii) any age restriction notices, warnings or other information required by Applicable Law. For those products containing solvents, the Listing must also include a warning that the item is a solvent based product and solvent abuse can kill instantly.

- **Sharp Objects:** including without limitation kitchen knives, hobby craft knives, utility knives, axes, razor blades and power saws. All Listings must include (i) any warning information featured on the Product; (ii) a warning notice that the product is not intended for use by children; and (iii) any age restriction notices, warnings or other information required by Applicable Law.
- **Alcohol:** All Listings must include (i) name of the beverage; the name of the manufacturer, the country of origin, the ABV% and the size of the product available for sale; (ii) an age restriction notice stating that the Product cannot be purchased by or for someone under the age of 18; (iii) any warning information featured on the Product; and (iv) any other warning notices or information required by Applicable Law. In addition, Merchants must display the logo of all responsible drinking associations they are a member of or otherwise associated with; must not make any health or nutritional claim for any product which contains more than 1.2% alcohol by volume; and may only apply geographical descriptions to products genuinely produced in a particular region.
- **Food Supplements:** All Listings must (i) include an express statement that the Product is a food supplement; (ii) include the name and amount of any vitamin or mineral or other substance with a nutritional or physiological effect; (iii) the portion recommended for daily consumption; (iv) any warning information featured on the Product; (v) a general warning notice not to exceed the stated recommended daily dose; that food supplements should not be used as a substitute for a varied

diet; and that the product should be stored out of the reach of young children; and (vi) any age restriction notices, warnings or other information required by Applicable Law. In addition Merchants may only sell food supplements that (i) are pre-packed; and (ii) contain vitamins or minerals included in the permitted list under the Applicable Law.

- **Food and food-related items (including food supplements and diet aids):** All Listings must (i) include the expiration date; (ii) not make any drug or medicinal claims or claim that the item is for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans and/or animals; (iii) replicate any warning information featured on the Product and (iv) include any age restriction notices, warnings or other information required by Applicable Law. In addition, the item must be delivered to the buyer before the expiration or 'use by' date; the item must be stored safely before dispatch and the Merchant must follow all storage directions on the item's packaging; the item may not be altered or changed by the Merchant in any way; the item(s) must be properly packaged or sealed to ensure that the Buyer can tell if they have been tampered with; the item must comply with all applicable food regulations; the item must not have been subject to recall by the manufacturer or by any authority in the country of residence of the Buyer and the Merchant may only apply geographical descriptions to products genuinely produced in a particular region.
- **Weight Loss and Slimming Aids:** All Listings must (i) expressly state the Product to be a weight loss or slimming aid; (ii) replicate any warning information featured on the Product; and (iii) any age restriction notices, warnings or other information required by Applicable Law.
- **Antiques or artefacts:** must comply with any applicable guidance (including without limitation the guidance published by the relevant authority).

LISTINGS POLICY

DATE: September 2018

This policy sets out what is and isn't allowed in Listings. These include guidelines on how certain items may be listed and described, restrictions on the use of profanity, HTML and JavaScript, and links. Please make sure that you read our Listing Policy before listing any item for sale on Marketplace.

Listings Policy

Merchants are solely responsible for ensuring that any item listed by them on the Rakuten Marketplaces complies with the restrictions set out in this User Agreement.

- You can list your items for sale in the products area of your account or via API
- Merchants must ensure that their Listings (i) accurately describe the items that they offer for sale on Rakuten Marketplaces and are not misleading to Buyers. Merchants are solely responsible for the accuracy of all information displayed to Buyers, including without limitation the country of dispatch. We may immediately and without notice suspend or terminate the account of any Merchant we reasonably believe to be providing inaccurate information.
- By uploading any products, content, data, files, images or other materials ("Materials") onto the Website, to the fullest extent that you have the legal right to do so, you grant the Rakuten Group a non-exclusive, worldwide, royalty-free right and licence to use, reproduce, perform, display (public communication), distribute, adapt, modify for technical purposes only, re-format and otherwise exploit, any and all of the Materials, in any existing media provided that the same are used only in relation to creating and editing products and the display and sale of items on Rakuten Marketplaces and other Partner Advertising Platforms or Affiliates. In addition, you waive all moral rights to the extent permitted by law (and where such moral rights cannot be waived you agree to transfer all moral rights) you have in the

Materials to the fullest extent permitted by law.

- Rakuten and the applicable Merchant have the joint right to create and edit such Merchant products. Merchants must at all times comply with the following rules when creating and editing their products:
 1. Complete all mandatory fields (including without limitation uploading all requisite health, safety and age restriction notices).
 2. Accurately describe the items to be uploaded so as to not mislead or confuse customers.
 3. Provide images for upload as URL links ending in .jpg; image URL links must start with http:// any other prefix will not be recognised and only direct links to an image will be accepted; text must not be included on the image (except if part of the product); images must be at least 300 x 300 pixel and cannot exceed 1000 x 1000 pixels.
 4. Do not include any addresses, phone numbers, email or physical addresses in any field; do not associate, reference or otherwise link the product with any other product or products (including but not limited to using search tags or external web links) which might corrupt a search result.
 5. Do not include any profanities or otherwise obscene or offensive language.
 6. Do not contain any product data for any Prohibited Items (see here).
 7. For all Restricted Items, comply with all requirements set out in the Restricted Items section of this Agreement;
 8. Comply with all release date, territory and other contractual or legal restrictions for embargoed products.
 9. Merchants are solely responsible for complying with all Applicable Laws in relation to product data.

- Where you have multiple quantities of a given item for sale, these must be listed under a single listing using the quantity field to specify quantity. You should not list the same item multiple times unless there is a clear difference in quality of the item, which should be accurately described.
- You must inform Buyers of your Terms and Conditions, your return policy and their withdrawal rights. We strongly recommend that you seek further information regarding consumer's statutory rights under the laws of the country where he is based. For the European economic area you can use the templates provided by Rakuten in the Rakuten Merchant Backend.
- It is your legal responsibility to ensure any Listing information you create and provide complies with all Applicable Laws. You must not: (i) infringe third party Intellectual Property Rights; or (ii) use tools to manipulate competitors' pricing.
- Indemnification for data imports through Rakuten employees. If you get some support from Employees of Rakuten to upload your items, to change you product pictures or descriptions or if Rakuten employees do the data import because of your instruction or request, you have to double-check the correctness of the descriptions, the pricing, the pictures and all other necessary information, before you take them online and you are solely responsible for this data imports and/or changes done by Rakuten employees. You acknowledge that it can always come to errors or wrong pricings or display errors which we are not able to recognize. You have to check every data import at least with a spot check.

Marketplace Presence Restrictions

- We reserve the right to restrict new Merchants to a certain volume of sales or total inventory value until such time as trading history has been established. We reserve the right to change these at any time without prior notice in the interest of our security and

the security of Rakuten Marketplace's users.

- Furthermore, we may restrict the creation of certain items to Merchants with an established trading history and/or a certain level and score of Merchant reviews, or other criteria we at our sole discretion deem necessary to ensure the security of the Website and of other Merchants and Buyers.
- Merchants are not permitted to sell any Prohibited Items and may only sell Restricted Items under the conditions stated in the Prohibited and Restricted Items List, which can be found [here](#) and may be amended by us from time to time. A notice of any amendments made to the Prohibited and Restricted Items List will appear on the Website.
- Merchants are solely responsible for ensuring that any item listed by them on the Rakuten Marketplaces complies with the restrictions set out in this User Agreement.

Violations of this Policy

- We may immediately and without notice suspend or terminate the account of any Merchant we reasonably believe to be disregarding this Listings Policy
- To report any violation of this Policy, please contact us support@rakuten.de

F. ORDER FULFILMENT POLICY

DATE: September 2018

We expect our Merchants to provide excellent customer service from beginning to end. To help Merchants meet our minimum performance standards, this policy outlines the basic requirements we expect regarding selling practices. For example, acceptable postage charges and expected dispatch times. Please make sure that you read our Order Fulfilment Policy before Listing any item for sale on the Marketplace.

Order Fulfilment Policy

- It is your responsibility to bear all risk and liability for sourcing, storing, selling, fulfilling and delivering all orders placed with you by Buyers.
- You are responsible for charging VAT and other taxes, if applicable, to Buyers and prices displayed must be inclusive of all applicable VAT, tax and delivery charges. It is your responsibility to collect any applicable taxes, whether VAT, customs duties or excise taxes, and to report and remit such taxes to the appropriate tax authority.
- When a Buyer has placed an order for an item offered by you, their order can be viewed in the orders area in your account. You can view each individual order or download multiple orders in a report. Orders will have a status: either "Cancelled", "Awaiting Payment", "Not Shipped", "Awaiting Completion", or "Completed".
- Merchants must ensure they reserve stock for all "Awaiting Completion" orders. If an order remains as "Not Shipped" for 7 days or more, it will be cancelled automatically.
- In the event that the Buyer's payment has already been processed and (i) you reject an order by cancelling it; (ii) the item is not completed by you for any reason; or (iii) the Buyer returns the item to you, we will refund the purchase price to the Buyer from your Merchant account and the status of the order will change to "Cancelled".
- Merchants must ensure that their delivery times for each delivery option they make available are clearly set out in the Rakuten Merchant Backend and that such delivery times are reasonable, accurately reflect the applicable courier service estimated delivery times and are not misleading. We may immediately and without notice suspend or terminate the account of any Merchant we reasonably believe to be providing inaccurate, false or misleading delivery information.
- The price of any items sold on Rakuten Marketplaces must be displayed inclusive of all postage, packaging and delivery costs unless you list and enable the Buyer to select a separate delivery charge.
- You are responsible for the performance of any services you employ or sub-contract in order to fulfil your orders, including postal services or couriers. If a service you have employed to fulfil your order is unable to meet their obligations, you must initiate the refund to the Buyer immediately and take up the dispute directly with the service operator.
- Proof of postage does not equate to proof of delivery and Merchants are expected to obtain the necessary insurance from any postal carriers in order to make a claim in the event that an item is reported as missing or lost in the post.
- You are responsible for any non-delivery, mis-delivery, theft or other mistake or act in connection with the fulfilment and delivery of your items.
- When you offer an item for sale and a Buyer chooses to buy from you, you are obliged to sell the item to the Buyer at the price advertised. You must dispatch the item to Buyers and honour the advertised price unless there was a clear mistake involved in the pricing. We may immediately and without notice suspend or terminate the account of any Merchant we reasonably believe has made pricing errors on more than one occasion or to prevent further

sales at an incorrect price.

- You confirm that you are the legal owner of the products which you list on the Rakuten Marketplaces, or are legally permitted to transfer title of any goods which are held by any third party, and that you are acting with the complete knowledge and understanding of any third party who holds goods for you.
- We may restrict the listing of certain products to Merchants with an established trading history and/or a certain level and score of feedback rating, or other criteria we deem necessary to ensure the security of the website and of other participants.
- You warrant that the sale of any item you list is not in breach of any Applicable Laws, including the law of the country in which the Buyer is a resident. If you are based outside of the European Economic Area (EEA), you are required to ascertain that all items you list are legally allowed into the EEA. We reasonably assume that you own the relevant licences for selling into the EEA and may terminate your agreement with us if you fail to provide such evidence upon request, in the event third parties' claims are brought against us. For the avoidance of doubt, we shall have no liability in that respect.
- Should you and the Buyer fail to find a suitable solution regarding any problems arising from the sale, you should either refund the customer or take up the dispute under the laws of Germany or of the Buyer's country of residence. A Buyer is entitled to raise a Rakuten Marketplace Guarantee claim against you where Rakuten will arbitrate their claim.

Violations of this Policy

- We may immediately and without notice suspend or terminate the account of any Merchant we reasonably believe to be disregarding this **Order Fulfilment Policy**
- To report any violation of this Policy, please contact us service@rakuten.de.

G. REFUNDS AND RETURNS POLICY

DATE: September 2018

This policy outlines the basic requirements we expect from our Merchants and their Buyers in relation to returns and refunds. For example, responses to return requests, expected return deadlines and refunds of postage charges. Please make sure that you read our Refunds and Returns Policy before using the Marketplace.

Refunds and Returns Policy

For Merchants:

- When selling items to Buyers, you must inform them of your T&C, returns policy, privacy policy and their withdrawal rights. You must respect a Buyer's statutory rights under the Applicable Laws of their country of residence. We strongly recommend that you seek further information regarding these. You can control the countries and localities you are willing to dispatch to from Rakuten Merchant Backend.
- When selling items to Buyers, you must inform about shipping costs to be incurred by Buyers in case of return of items within the legally defined period
- Full or partial refunds or cancellations can be made in the orders management area of your account.
- If the Buyer has sent back the item to you or you have received the item or a proof of delivery for the return shipment, you have to enter it immediately into the orders management area of your account.
- Merchants are responsible for resolving Buyer complaints.
- Rakuten will make its best effort to bear the cost of any chargebacks made by Buyers, unless there is an indication of fraud taking place between Merchant and Buyer or in case of chargebacks that indicate that Merchant has not delivered

items/services to Buyer and Merchant cannot provide Rakuten with a proof of delivery. In such case, the amount for the respective chargebacks and any fees relating to such transition shall be deducted from the Merchants account balance.

Violations of this Policy

- We may immediately and without notice suspend or terminate the account of any Merchant we reasonably believe to be disregarding this **Refunds and Returns Policy**

To report any violation of this Policy, please contact us

service@rakuten.de

PRICING AND PAYMENT ANNEX

Dated: January 2019

This Pricing and Payment Annex applies to all Transactions on Rakuten.de

Terms defined in the Agreement shall have the same meaning in this Pricing and Payment Annex. In addition the following terms shall have the following meanings:

“Basic Yearly Fee”	means the non–refundable yearly subscription fee payable by a Merchant to Rakuten for use of the Services;
“Basic Rakuten SuperPoints Fee”	means 1% of the Sale Price (excluding delivery charges) payable by a Merchant to Rakuten for participation in the Rakuten Super-Points (RSP) loyalty scheme.
“Basic Rakuten SuperPoints Rate”	means 1 Rakuten SuperPoint for every € 1 spent on a purchase via Marketplace (after applying any other discounts, and including VAT and any other applicable taxes, but excluding delivery charges). The number of RSP earned will be automatically rounded down to the nearest whole number (e.g. if an item costs €1,39, the registered Buyer will earn 1 RSP).
“Initial Setup Fee”	means the non-refundable setup fee payable by a Merchant to Rakuten for the initial setup of the Services.
“Per Sale Fee”	means the applicable percentage of the Sales Price which is payable by a Merchant to Rakuten for each Transaction;
“Sale Price”	means the purchase price paid for a Product including any delivery charges, customs and excise duty, discounts offered and/or applied by Merchants, VAT and any other applicable taxes;
"Store Opening Date"	means the date upon which the Merchant's Marketplace Presence is made generally available to the public; and
“Rakuten Super Points Fee”	shall have the meaning set out in paragraph 1.d. of this Pricing and Payment Annex.
“Cancelation Fee”	means 3% of the Sale Price which is payable by a Merchant to Rakuten when an order is cancelled by the Merchant for any reason.
“Affiliate Fee”	Means 1% of the Sale Price which is payable by a merchant to Rakuten when an order comes from an Affiliate channel

1. In consideration for the Services, Merchant shall pay to Rakuten the following Fees:

a. Initial Setup Fee – The Merchant will be charged an Initial Setup Fee of € 49,- on the Account Open Date.

b. Basic Yearly Fee:

Fee Plan	BASIC
Basic Yearly Fee	€ 468,-

c. Per Sale Fee – The applicable Per Sale Fee for each Fee Plan is set out below

Category Group	Classic Plan
Normal Categories	9 %
Reduced Categories	5 %

d. Rakuten SuperPoint Fee

- Merchants agree to offer at least the Basic RSP Rate of 1% on all purchases from their Marketplace Presence. The Basic RSP Fee is included in the Per Sale Fee.
- If a Merchant chooses, in their sole discretion, to offer an increased rate of RSP on any Products offered for sale via their Marketplace Presence (e.g. 5 RSP per € 1,-), the RSP fee charged in respect of those products will increase to reflect the increased RSP rate ("Rakuten SuperPoints Fee"). By way of example, if a Merchant offers 5 RSP per € 1,-, we will apply RSP Fee of 5% to those sales (inclusive of the Basic RSP Rate).

e. Cancellation Fee

- Merchants shall pay the Cancellation Fee to Rakuten of 3% of the Sale Price of the relevant order, whenever an order is cancelled (partially or in full) by the Merchant for any reason. Within this Cancellation fee, Rakuten will offer to the registered Buyer 1% worth of RSP.

f. Affiliate Fee

- Merchant shall pay the affiliate fee of 1% to Rakuten, if the order comes from one of the affiliates of Rakuten’s affiliate network.

2. The Fees shall be payable by Merchant as follows:

a. Initial Setup Fee and Basic Yearly Fee

- Initial Setup Fee is due and payable, in full, at the Account Open Date.

- The Basic Yearly Fee is due and payable, in full, on a yearly basis from the first (1st) day of each full year, in advance.
- b. Per Sale Fee and RSP Fee –
- The Per Sale Fee and RSP Fee are due and payable, in full, once a valid Transaction has occurred. When and whether a Transaction is valid shall be determined in Rakuten's sole discretion.
 - If a Merchant refunds a Buyer the full purchase price or more, the Per Sale Fee paid in respect of that Transaction will be credited back to them in full after deduction of the Cancellation Fees if applicable.
 - If a Merchant processes a partial refund to a Buyer, they will not be reimbursed the Per Sale Fee paid in respect of that Transaction.
 - RSP Fees in respect of purchases that are subsequently cancelled by the Buyer or returned will be refunded.

Merchant shall not be entitled to deduct, withhold or set off any sums that Rakuten and/or Rakuten Payment Service Partner owes to Merchant from Fees due and payable under the Agreement and this Pricing and Payment Annex.

3. Rakuten shall be entitled, in its sole and absolute discretion, to (i) deduct, withhold or set off all Fees from any sums that Rakuten and/or Rakuten Payment Service Partner owes to Merchant; or (ii) collect all Fees pursuant to Merchants direct debit mandate and Merchant is solely responsible for keeping its direct debt mandate up to date and complete or (iii) invoice Merchant for such sums, which sums shall become due and payable by Merchant within 30 calendar days of the date of the invoice. Rakuten shall be entitled to charge interest on any Fees not paid when due at the rate of 3 % per annum. Such interest will accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.
4. All Fees stated herein are stated in Euro excluding any VAT, withholding or other tax.