WORKS CONTRACT

concluded on [] in [] (hereinafter, the „**Contract**”) between:

**Zalando OpCo Polska sp. z o.o.** with its seat in Warsaw, ul. Jasna 26, 00-054 Warsaw, entered into the Register of Entrepreneurs of the National Court Register under number KRS 0000623928,

represented by David I. Schroeder and Frank Stehle,

hereinafter referred to as **„Zalando” NEEDS ADJUSTING**

and

[]**,** with its registered seat in [], entered into [],

represented by [],

hereianfter reffered to as the **„Contractor”.**

Zalando and the Contractor shall be jointly referred to as the „**Parties**”, and each individually as a „**Party**”.

# Subject Matter of Contract

## Zalando hereby orders the Contractor performance of the works (the „**Works**”) comprising of [description of the Works].

## The Works shall be performed solely based on this Contract and the documents referred to herein.

## As a part of performance of the Works the Contractor shall bear all costs related thereto

# Contract documents

## The contractual terms and conditions binding the Parties follow from the below documents (the “**Contract Documents**”):

### this Contract;

### the Contractor’s offer dated [] (the “**Offer**”, **Schedule 1**) in connection with the negotiations’ minutes dated [] (**Schedule 2**);

### the plans made available in order to prepare the Offer (**Schedule 3**);

### the applicable European Standards (CEN) and Italian Norms;

### the construction standards and practice;

### the applicable provisions of law, including concerning construction, environmental protection, hygiene and safety of employees;

### the provisions of the Italian Civil Code (in particular the provisions relating to contract on construction works if the Works constitute the construction works and otherwise the provisions relating to work’s contract.

## In case of any discrepancies between the particular Contract Documents, the order of documents set forth in § 2.1 shall be prevailing. In case of discrepancies between the equivalent documents or in a single document all doubts shall be clarified in the manner allowing to perform the purpose of the Contract in the scope typically expected from a professional contractor.

## For the avoidance of doubt, the general terms and conditions of the Contractor, if any, do not apply to this Contract.

# Representations and warranties

## The Contractor represents that it possesses full and complete knowledge of the scope of the Works as well as all the actions necessary to duly perform the Works and the Contract.

## The Contractor represents that:

### all the elements of the Works have all the certificates permitting their placing on the Polish market;

### performance of the Works does not require obtaining a construction permit or any other administrative decision[[1]](#footnote-1).

## The Contractor represents that it possesses the required resources, technical and operational possibilities as well as qualified personnel, knowledge, experience and authorization for performance of the Works within the deadlines set forth herein.

## Zalando states and the Contractor acknowledges that Zalando does not have knowledge with respect to technical matters related to the performance of the Works.

# Parties’ representatives

## Zalando hereby appoints [name of representative for Zalando] as the Zalando’s representative responsible for day-to-day contacts with the Contractor with respect to the performance hereof (the “**Zalando’ Representative**”). Zalando’s Representative is authorized to give the Contractor instructions in respect of all technical matters related to the performance of the Works, however, it is not entitled to make any statements of will on behalf of Zalando. Zalando may at any time change the Zalando’ Representative informing the Contractor in writing.

## The Contractor hereby appoints [name of representative for Contractor] as the Works’ manager (the “**Works’ Manager**”). The Works’ Manager is the Contractor’s attorney-in-fact authorized to make any statements of will on behalf of the Contractor.

# Price

## Zalando shall pay to the Contractor the amount of EUR [] (say: [] euro) plus VAT, if applicable (the “**Price**”) for due performance of the Works in accordance with the provisions hereof. The Price shall be the final amount due to the Contractor hereunder and covers the entire Works and all other performances of the Contractor hereunder.

## The Price is an agreed lump sum and is not subject to any corrections under any basis, including increase or decrease of labour or goods’ costs, including materials and equipment, as well as other expenses related to the Works or other circumstances, including change of laws other than change of VAT rates.

## The Contractor shall pay all taxes and other due amounts resulting from its obligations hereunder and the Price shall not be corrected in that respect (save for VAT on the Price, if applicable, in the amount established pursuant to the provisions of law in force on the date of payment).

## The Price also covers the risk and liability of the Contractor stemming from the verification of this Contract and Schedules hereto, taking into account all potential discrepancies and contradictions. Any comments, remarks or objections made with respect to the above after the conclusion of the Contract may not constitute grounds to demand increase of the Price or extension of the term for performance of the Works.

# Changes

* 1. Zalando may order introduction of changes to the scope of the Works (the “**Changes**”).The impact of the ordered Changes on the settlements between the Parties and the date of completion of the Works shall be then separately agreed upon by the Parties. Any Change shall be effective only upon written approval of Zalando confirming impact on Contractor’s remuneration and the date of completion of the Works.
  2. While calculating the price for the Changes, the Contractor shall not use the rates higher than the rates given in the Offer / used for calculation of the Price. Should the Changes require the execution of the works item which are not identical to those given in the Contractor’s Offer for the initial scope of the Works, the Contractor shall ask for Zalando’s approval for the unit rate for the new item, which shall be again based on the rates of the work items similar to the ones given in the Offer / used for calculation of the Price. [Should there be no similar work items in the Contractor’s Offer for the initial scope of the Works, then the Contractor’s new rate shall be based on the cost plus profit rate of 5%].
  3. Works carried out by the Contractor without adherence to the provisions of this § 6 shall not be additionally paid for, and Zalando or the Zalando’s Representative shall be authorized to demand that they be removed at the cost and risk of the Contractor.
  4. In the event the Parties do not agree on the terms of performing the Change, Zalando shall have the right to commission performance of the Change to another entity, and the Contractor shall be obliged to coordinate the works of such other entity with its own Works. The Contractor shall not be liable for damage arising in connection with the performance of the Change by another entity. In such an event (lack of agreement) the Contractor shall be obliged to adhere to the requirements of Zalando connected with the works, communicated by the Zalando’s Representative.

# Contractor’s obligations

## The Contractor shall perform the Works with the highest degree of diligence, according to the Contract Documents, highest professional standards and the professional knowledge of the Contractor.

## The Contractor shall ensure:

### properly trained personnel in the appropriate number of people and warrants that the Works shall be properly performed observing the respective standards and in timely manner;

### proper equipment, materials as well as other equipment and items necessary to perform the agreed subject matter of the Contract.

### that the Site (and all adjacent roads, buildings and sites used by the Contractor) are kept clean at all times.

## During performance of the Works the Contractor and its employees shall observe the provisions on work’s health and safety, in particular the health and safety at work regulations of Zalando and Zalando’s general contractor, the safe access regulations of Zalando and Zalando’s general contractor, environmental laws and regulations and fire prevention regulations. The Contractor hereby confirms that it and its employees have become acquainted with the said regulations.

## The Contractor shall observe the instructions of Zalando’s general contractor in respect of safety on the Site as well as coordination of the Works with the works of other contractors.

## All documents and information from Zalando required to perform the Works shall be provided to the Contractor at least 12 working days before commencement of the Works. The Contractor shall examine such documents and information in view of all potential discrepancies with the Contract Documents and contradictions. Any comments, remarks or objections made with respect to the above after commencement of the Works may not constitute grounds to demand increase of the Price or extension of the term for performance of the Works.

## As of the date of hand-over of the site where the Works shall be performed (the “**Site**”) to the Contractor, the Contractor shall exclusively responsible and shall bear all liability against all claims of any third parties related to the performance of the Works, and the Site, including, without limitation, any labor claims or claims related to acts performed by the Contractor’s staff or the Contractor’s subcontractors and the Contractor shall release Zalando from any such liability and shall compensate Zalando for any damage Zalando may incur in connection with such claims. In particular, following the hand-over of the Site to the Contractor, the Contractor:

### shall bear the risks related to the Site, including, without limitation, claims related to any damage or injury that may be inflicted to any third party on the Site or from the Site (including representatives and employees of Zalando provided that they comply with the Contractor’s instructions), any administrative fees or fines related to, inter alia, protection of environment and nature, as well as public roads;

### may not refer to events connected with the Site or the status of the Site in order to justify non- performance or improper performance of obligations hereunder, except for the circumstances for which neither Zalando nor the Contractor are liable, i.e., discovery on the Site of explosives (weapon, ammunition, unexploded shells) and/or archeological discoveries, as well as related obligations arising out of provisions of law and decisions of pertinent authorities of public administration.

## The Contractor shall not use the Site for any other purpose than set forth in this Contract.

# Employees. Subcontractors

## The Contractor shall hire on the Site, in connection with performance of the Works and removal of defects in it, employees who have proper professional qualifications, who comply with requirements of work and health safety at work, and who take care of proper performance of the works with due diligence.

## Zalando and the Zalando’s Representative have the right to submit to the Contractor comments with regard to persons who, in their opinion, are incompetent or careless in performing their work or whose presence on the Site is considered by them to be undesirable for other justified reasons. In such case the Contractor is obligated to immediately replace the persons indicated by Zalando and/or Zalando’s Representative.

## The Contractor may hire subcontractors only on the written consent of Zalando. The Contractor’s query should contain a detailed description of the scope of works which it intends to commission to a subcontractor and information about the proposed subcontractor, its experience and financial situation guaranteeing punctual and proper performance of the entrusted works.

## Commissioning by the Contractor of performance of particular parts of the Works to subcontractors does not change the Contractor’s obligations vis-à-vis Zalando for performance of this part of the Works. The Contractor is liable for actions and negligence of the subcontractors and their workers as for its own actions and negligence.

## The Contractor is obligated to ensure coordination of all the Subcontractors.

## Regardless of the remaining provisions hereof, Zalando – prior to making any payments whatsoever to the Contractor – has the right to request from the Contractor written statements from all the subcontractors confirming that they received from the Contractor payments for all the works performed by them, for which the Contractor requested payment from Zalando contained in the relevant invoice. At the request of Zalando, the Contractor shall be furthermore obligated to furnish copies of invoices issued by the subcontractors for given works together with proofs of payment of these invoices by the Contractor. Zalando shall be authorized to withhold payment or a pertinent part thereof until the above statements, invoices and proofs of payment have been received.

## The Contractor undertakes to release Zalando from all claims which may be raised by subcontractors vis-à-vis Zalando in relation hereto and shall repair all damage which Zalando may incur in this respect. In particular, the Contractor shall cover all expenses and costs incurred by Zalando in relation to a defense against such claims or in relation to satisfaction of same. In the case where a subcontractor raises a claim vis-à-vis Zalando, Zalando is entitled – though in no way is it obligated – to make directly with the subcontractors any settlements of the Contractor’s payments due to subcontractors, and with which the Contractor is in arrears for at least 30 days. All such payments of Zalando shall be deducted from the Price due to the Contractor. Before making any such direct payments to subcontractors, Zalando shall inform the Contractor of such an intention, and the Contractor – within 3 working days of receipt of a given notification from Zalando – shall have the right to express its opinion on the matter.

# Term for performance of Works

## The Works will be performed in accordance with the time schedule that will be prepared and agreed during hand-over of the Site and which will be attached as schedule to this Contract. Notwithstanding the foregoing the following milestone are binding for the Parties:

[]

## The Works shall be completed by [].

## If at any time during the performance of the Works the Contractor will have reasons to believe that the Works or their relevant part could not be completed within the deadlines set forth in § 9.1 or § 9.2 above, regardless of the reasons for such delay, the Contractor shall immediately notify Zalando of such delay.

## In case of delay in performance of the Works exceeding [14] days, due to reasons attributable to the Contractor, Zalando – without prejudice to any other rights it may have under the provisions of law or this Contract – may order further performance of the Works to a third party at the Contractor’s cost and risk.

# Materials

## The Contractor shall ensure all materials necessary to perform the Works and will only use the materials permitted to be placed on the Italian market in accordance with the applicable provisions of law.

## Upon Zalando’s request the Contractor shall prepare a list of materials that are used or are intended for use in the course of performance of the Works.

## The ownership of the particular elements of the Works and the materials used for performance of the Works shall be transferred to Zalando at the moment of their delivery to the Zalando’s premises. Notwithstanding the foregoing, the risk of accidental loss of the elements of the Works or the materials or their damaging shall pass onto Zalando following the acceptance of the Works.

## All the elements of the Works shall be free of any pledge, lien, claims, rights of third parties or any other encumbrances.

# Contractual penalties

## The Contactor shall pay to Zalando the contractual penalty in case of:

### delay in performance of the Works in respect of the deadlines specified in § 9.1 in the amount of 0.1 % of the net Price for each day of delay;

### delay in performance of the Works in respect of the deadline specified in § 9.2 in the amount of 0.2 % of the net Price for each day of delay;

### delay in elimination of the defects of the Works in the amount of 0.1 % of the Price for each day of delay in eliminating the defects from the deadline for such elimination set in accordance with the Contract;

### withdrawal from this Contract for reasons attributable to the Contractor in the amount of [10] % of the Price.

## In case any deadlines specified in § 9 are changed the contractual penalties are calculated based on the changed deadlines.

## The aggregate amount of the contractual penalties may not exceed [10] % of the Price.

## Zalando may claim damages in excess of the contractual penalties.

# Acceptance of Works

## Following the performance of the Works the Parties jointly shall conduct the procedure of acceptance of the Works (the „**Acceptance**”). The Acceptance shall take place immediately following completion of the Works. The Acceptance shall be confirmed by the protocol (the “**Acceptance Protocol**”) signed by both Parties.

## Zalando may refuse to accept the Works if they are defective. In such case Zalando shall set a period of time during which the Contractor shall eliminate the defects. Following the lapse of such period the Works shall again undergo the acceptance procedure and if Zalando identifies no defects the Acceptance shall take place. The Contractor shall eliminate all defects, including those not indicated by Zalando during checking of the Works. Following the elimination of defects the Contractor shall again request Zalando to make the Acceptance of the Works and shall also redress all damage suffered by Zalando as a result of the previous unsuccessful acceptance.

## If the Contractor does not eliminate, within deadline set by Zalando, the defects identified during the Acceptance procedure, Zalando shall be entitled to:

### accept the Works and reduce the Price by the amount decreasing the value of the Works taking into account the identified defects; or

### eliminate the defects by itself and/or a third party at the cost of the Contractor; or

### refuse acceptance without being in delay as a creditor.

## Minor defects not affecting the use of subject matter of the Contract do not entitle Zalando to refuse acceptance of the Works. In case of such defects they shall be indicated in the Acceptance Protocol and immediately eliminated by the Contractor.

# Statutory warranty for defects and quality guarantee. Liability

## The Contractor shall be liable towards Zalando for defects of the Works decreasing their value and usability taking into account the purpose set forth in the Contract Documents or if the Works are incomplete.

## Without prejudice to Zalando’ rights under the statutory warranty for defects the Contractor hereby declares that it grants to Zalando the quality guarantee for the Works for the period of 5 years from the Acceptance (the “**Guarantee Period**”). In addition, the period of the Contractor’s liability under the statutory warranty for defects shall be equal to the Guarantee Period and may be further extended in the instances provided for in the provisions of law.

## In case any defects of the Works occur during the Guarantee Period, the Guarantee Period concerning such defective part of the Works shall be extended by the period of elimination of the respective defect by the Contractor.

## The Contractor shall obtain and transfer to Zalando producers’ guarantees for all equipment and materials constituting elements of the Works. The Contactor shall deliver to Zalando original copies of such guarantees.

## Defects’ elimination procedure described in § 12.2 and § 12.4 shall apply accordingly to the defects revealed in the Guarantee Period.

# Security

## In order to secure a due performance hereof, the Contractor shall provide Zalando with an irrevocable, unconditional and payable upon first request bank’s or insurer’s best performance guarantee within 20 working days from the date of execution hereof, totaling 20 % of the gross Price, and valid from the date of issuance until the Acceptance (the “**Proper Performance Guarantee**”).

## The Contractor is obliged to extend the validity of the Proper Performance Guarantee (each time by at least three consecutive months) if the Works are still in progress – to the effect that the guarantee remains valid until the actual Acceptance, even if the actual date of the Acceptance is later than the original expiration date of the guarantee. Renewed guarantee shall be submitted to Zalando at least 14 days before the expiry of the guarantee or 14 days before the each expiry date of the renewed guarantee. If the Contractor fails to comply with the obligation to renew the guarantee, Zalando shall be entitled to exercise, at its own discretion, of the existing guarantee and retain the amount obtained in lieu of the renewed guarantee, even if it cannot indicate a damage caused by the non-fulfillment of the Contractor’s obligation. Renewed guarantee shall comply with the conditions referred to in § 14.1.

## The final payment shall be made to the Contractor upon presenting an irrevocable, unconditional and payable upon first request bank’s or insurer’s guarantee securing Zalando’s claims under the statutory warranty for defects and/or quality guarantee, totaling 10 % of the gross Price, and valid from the date of issuance until the lapse of the Guarantee Period (the “**Defect Liability Period Guarantee**” and together with the Proper Performance Guarantee the “**Guarantees**”)

## The Contractor shall be also obligated to extend the validity of the Guarantees in case they are delivered for a periods shorter than specified in § 14.1 and § 14.2 respectively.

## The identity of the Guarantor and the form of each Guarantee shall be pre-approved by Zalando. All costs of obtaining and maintaining the Guarantees (as well as the costs of possible extension of the Guarantees) shall be borne by the Contractor.

## Zalando may rescind the Contract in case the Contractor fails to submit the Proper Performance Guarantee in accordance with the provisions of § 14.1 within the deadline specified in § 14.1 and if the Contractor does not renew and submit the Guarantee according to the § 14.2 or § 14.4 and should Zalando rescind this Contract, the Contractor is not entitled to any claim on this account. The Investor may rescind from the Contract within 6 months from the lapse of the deadline for submission or renewal of the Guarantee.

# Payments

## The Parties agree that that the payments under the Contract shall be made in accordance with the payment schedule (“**Payment Schedule**”, **Schedule 5**). The first payment will be made only upon providing the Proper Performance Guarantee.

## All interim payments shall be made based on the written confirmation of performance of the works indicated in the Payment Schedule by Zalando and the VAT invoice issued by the Contractor. For the avoidance of doubt, any acceptance of the works for the purpose of interim payments shall not be deemed as any formal acceptance of the Works, including their quality, and does limit the right of Zalando to raise claims in respect of the Works’ defects.

## Subject to § 14.3, the final payment to the Contractor shall be made based on the Acceptance Protocol signed by both Parties and the VAT invoice issued by the Contractor.

## VAT and other taxes, if required by law, shall be separately indicated in the invoice.

## The payment term for all payments is 60 days from delivery of the properly issued invoice to Zalando provided that on the date of issuing of invoice all other conditions for payment are met.

## The payments for the performance of the Works shall be made to the following bank account of the Contractor: [].

# Insurance

## Upon request from Zalando the Contractor shall hold construction risks insurance covering the Works and provides evidence thereof to Zalando before the Works are commenced.

## The Contractor shall hold civil liability and property insurance corresponding to the scope of the Works and provide Zalando with evidence of concluding the required insurance agreements as well as payment of the respective insurance premiums. The sum insured shall be no less than:

### for personal injury: EUR 5,000,000 for single damage and each person; and

### for other damage: EUR 3,000,000 for single damage.

## Upon each Zalando’ request the Contractor shall provide Zalando with evidence of concluding the required insurance agreements as well as payment of the respective insurance premiums.

# Rescission

* 1. Apart from other cases provided for in the Contract or in provisions of law, the following events constituting a breach of the Contract shall authorize Zalando to rescind the Contract:
     1. the Contractor has failed to commence Works within 10 working days of the hand-over of the Site or suspends the Works for the period of 10 working days;
     2. the Contractor, in spite of a prior written notice from Zalando, fails to perform Works in accordance with the Contract;
     3. the Contractor is delayed in performing the Works due to circumstances for which it is liable in accordance with the Contract, in such a manner that it is obvious that they will be completed more than 30 days behind the date specified in § 9.2;
     4. it becomes obvious that Works are or will be defective or that defects in Works will be of a type beyond repair;
     5. the Contractor declares that the Works will be defective or that it will not meet the date specified in § 9.2;
     6. the Contractor subcontracts any part of Works to a subcontractor without Zalando’s consent;
     7. the Contractor blatantly breaches other obligations hereunder and does not cease to do so or fails to remove the effects of such breaches within 10 working days of receipt of a summons from Zalando;
     8. the Contractor has become insolvent within the meaning of bankruptcy law, or a substantial part of the Contractor’s property having an effect on the performance hereof has been seized.

Zalando will be authorized to rescind the Contract on the basis of this provision after it has set additional 14 days’ deadline for the Contractor to remedy the breaches hereunder, with a threat that in the event of ineffective lapse of this deadline it may rescind the Contract. Irrespective of the foregoing, Zalando may rescind the Contract without setting an additional deadline in situations described in Art. 492 of the Civil Code.

* 1. Zalando may exercise its rescission right within 6 months from occurrence of an event constituting grounds for rescission, not later than by [*maximum outside date*].
  2. In the event of rescission of the Contract by any Party the Contractor should immediately suspend Works, make an inventory thereof with the participation of Zalando and the Zalando’s Representative, secure the Works performed and the Site according to instructions of the Zalando’s Representative at the expense of the Party whose act or omission was the basis for rescission of the Contract, and leave the Site by the deadline agreed upon with Zalando. Rescission of the Contract shall not release the Contractor from liability for non-performance or improper performance of the Contract, obligation to pay contractual penalties, liability for defects in the Works performed until the day of rescission, liability in respect of quality guarantee of the Works performed or other Contractor’s obligations provided for herein.
  3. Should it be impossible to agree upon deadline to leave the Site the Contractor shall leave the Site within 7 (seven) days of recession the Contract at the latest.
  4. In the event of the Zalando’s rescission of the Contract Zalando will not be obligated to pay the Contractor any further dues in respect of the Contract until such time as the Parties shall have executed an inventory protocol regarding the Works performed until the day of rescission and completion of the Works by the new contractor. The Contractor will be entitled to payment for all Works properly performed by the latter in accordance with the Contract until the day of rescission of the Contract. In the event of the Zalando’s rescission of the Contract for reasons for which, in accordance with the Contract, the Contractor is liable, the payment made to the Contractor shall be reduced by (i) the increased cost of completion of all Works by the new contractor as compared to the Price, (ii) cost of removal of any defects and snags in the Works performed by the Contractor, (iii) contractual penalties due to Zalando in accordance with the Contract; (iv) supplementary damages due to Contract in respect of delay in the completion of Works.
  5. In the event of the Contractor’s rescission of the Contract the Contractor shall be entitled exclusively to remuneration for all the Works properly performed by the latter in accordance with the Contract until the day of rescission of the Contract The acceptance of such works and issuance of an invoice for them shall be subject to the procedures of the Acceptance and issuance of the invoice, respectively, in § 12 and § 15 hereof. Apart from the foregoing, the Contractor will not be entitled to any claims vis-à-vis the Zalando.

# Governing law. Dispute settlement

## This Contract shall governed by Italian law with the exclusion of United Nations Convention on Contracts for the International Sale of Goods.

## All disputes arising out of the Contract or related hereto, shall be amicably settled by the Parties in good faith negotiations. If any dispute hereunder is not resolved amicably within 30 days from the date of a pertinent request by a Party, it will be settled finally by the common court with venue jurisdiction over Zalando’s registered seat.

# Final provisions

## The Parties make the mutual commitment to keep secret, to the extent specified by Polish law, all confidential information received in connection with the negotiation and/or conclusion of this Contract. This principle does not apply to the provision of information to the Parties’ advisers to the Parties to the extent required for performing the Contract. In such case, the adviser of the given Party shall be appropriately obligated to maintain confidentiality. The confidential information may only be disclosed to the courts or other authorities entitled to receive such information under mandatory provisions of law.

## Each amendment of the provisions hereof shall be made in writing under the pain of invalidity.

## The Schedules constitute an integral part hereof.

## The Contractor may not transfer any of its rights or obligations hereunder to any third party without a priori written consent of Zalando.

## The Contract has been made in two copies, one for each of the Parties.

**Schedules:**

Schedule 1 – Contractor’s Offer dated []

Schedule 2 – Negotiations’ minutes dated []

Schedule 3 – Plans (used for calculations)

Schedule 4 – Time Schedule

Schedule 5 – Payment Schedule

|  |  |
| --- | --- |
| **On behalf of Zalando:** | **On behalf of Contractor:** |
|  |  |

1. If applicable [↑](#footnote-ref-1)