

Instacart ads terms and conditions

Last updated: March 2022

These Instacart Terms and Conditions (these “Terms”) govern Company’s purchase of Services (defined below) from Maplebear Inc., a Delaware corporation doing business as Instacart (“Instacart”) with respect to the order form to which these Terms are attached (the “Order Form”).

1. DEFINITIONS.

1.1. “**Campaign**” means the promotion of Company’s Product(s) by Instacart as specified in the Order Form, beginning on the Campaign Start Date and ending on the earlier of (i) the date the Budget Cap specified in the Order Form is achieved and (ii) the Campaign End Date.

1.2. “**Company**” means the entity so identified on the Order Form.

1.3. “**Campaign End Date**” means the last date the Campaign is run on the Instacart Platform, as specified in the applicable Order Form.

1.4. “**Campaign Start Date**” means the first date the Campaign is run on the Instacart Platform, as specified in the applicable Order Form.

1.5. “**End User**” means an Instacart customer on the Instacart Platform.

1.6. “**Fees**” means the fee specified in the applicable Order Form or Order.

1.7. “**Instacart Data**” means any and all data or information (i) generated by Company’s use of the Instacart Platform or any other Advertising Platform, and/or (ii) provided by Instacart to Company hereunder, including but not limited to Reporting Information, and any usage and performance data derived from Campaigns.

1.8. “**Instacart Platform**” means the websites and mobile applications owned and operated by Instacart, where End Users shop for groceries, and which includes the Instacart Self-Service Platform.

1.9. “**Order Form**” means an order form, insertion order or any writing or electronic consent executed between the parties for the purchase of Services subject to these Terms.

1.10. “**Product**” means the Company product(s) identified in an Order Form.

1.11. “**Promotional Materials**” means all promotional, advertising, marketing, display and other materials provided by or on behalf of Company to Instacart, including, but not limited to, products, product packaging, product names, sweepstakes/contests and other promotions and rules related thereto, slogans, logos, trademarks, plans, ideas, marketing claims, creative materials, artwork, layouts, works, content, data, images, photographs, graphics, multimedia, audio, video, audio-visual and other content, in any media or formats now known or developed in the future

1.12. “**Redemption Fee**” means, with respect to a coupon campaign, the fee per coupon redemption as listed in the Order Form.

1.13. “**Reporting Information**” means data pertaining to the Campaign in the form provided by Instacart.

1.14. “**Services**” means the promotion of Company’s Product(s), by Instacart as specified by the Order Form and the provision of Reporting Information with respect thereto.

2. SERVICES; PROMOTIONAL MATERIALS.

2.1. Services. Company authorizes Instacart and its affiliates to run the Campaign featuring Company's Promotional Materials on the Instacart Platform or any content or property (each a "Advertising Platform") provided by Instacart or its affiliates on behalf of Instacart or, as applicable, a third party ("Advertising Partners"). Company is solely responsible for all: (i) the content of Campaigns, (ii) Promotional Materials trafficking or targeting decisions (e.g., keywords) ("Targeting"), and (iii) the services and Products advertised in the Campaign. Instacart will run the Campaign in accordance with these Terms and the specifications set forth in the Order Form. Notwithstanding the foregoing, Instacart, at its sole discretion, will determine the appearance, placement, and timeframe for Campaigns, except as may otherwise be specified in the Order Form, and the Company authorizes Instacart and its affiliates to use automated tools to format Promotional Materials. Instacart and its affiliates may also make available to Company certain optional features to assist Company with the selection or generation of Targeting or Campaigns. Company is not required to use these optional features and, as applicable, may opt-in to or opt-out of usage of these features. However, if Company uses these features, then Company will be solely responsible for the Targeting and Campaigns resulting from use of such features.. Instacart and its affiliates or Advertising Partners may reject or remove a specific Targeting or Campaign at any time for any or no reason. Instacart and its affiliates may modify or cancel Services at any time.

2.2. Promotional Materials. Company must deliver all Promotional Materials to Instacart no later than two (2) weeks prior to the Campaign Start Date, unless otherwise specified in the Order Form, and in the format specified or requested by Instacart. Company acknowledges it shall be liable to the extent any delays in such delivery result in a delay of Instacart's fulfillment of the Services. All Promotional Materials are subject to approval and acceptance by Instacart. The approval and/or the promotion of a Campaign by Instacart will not be deemed (i) to be a statement or opinion by Instacart that the Promotional Materials comply with applicable federal, state and local laws, requirements, or regulations or (ii) to render Instacart legally responsible or liable for any Promotional Materials. Company remains liable for any Promotional Materials. Company shall abide by any Instacart ad policies in effect and made available to Company on the Instacart Platform, or otherwise provided to Company. Instacart reserves the right to reject use of Promotional Materials in whole or in part. Except as otherwise provided herein and subject to these Terms, Company hereby grants Instacart a non-exclusive royalty-free right and license to use the Promotional Materials, including without limitation Company's trademarks, service marks, trade names, trade dress, slogans, taglines, and brand names ("Company Marks") and any and all designs, artwork, domain names, copyrighted works, photographs, images, videos, audio, content, copy, product descriptions, and any and all other related intellectual property rights or right of publicity in the Promotional Materials (collectively, with Company Marks, "Company IP"), for the sole purpose of fulfilling its obligations under these Terms and providing the Services under these Terms and the Order Form during the applicable Campaign Term(s). All goodwill arising from the use of Company IP in connection with the Services will inure to the benefit of Company.

3. REPORTING INFORMATION. Instacart will submit all Reporting Information to the Company in the form of a report to be provided by Instacart after the end of the Campaign, unless the Parties agree in the Order Form to such other delivery timeline. In the event Company has access to the Instacart Self-Service Platform, Company may access Reporting Information therein. Reporting Information shall be considered Instacart's Confidential Information.

4. PAYMENT. Company agrees to pay Instacart the fees and expenses specified in the applicable Order Form within thirty (30) days of receipt of a valid invoice from Instacart. Amounts unpaid when due will accrue interest at a rate equal to the lesser of 1.5% per month and the highest rate permitted by applicable law. Company is responsible for paying all taxes applicable to receipt of the Services. Instacart reserves the right to suspend or terminate any Campaign for failure to timely pay fees and expenses. To the fullest extent permitted by applicable law, Instacart shall be entitled to collect any costs, expenses or reasonable attorneys' fees resulting from the enforcement of this Section.

5. INDEMNIFICATION.

5.1. Indemnification by Instacart. Subject to Section 5.3, Instacart will defend, indemnify and hold harmless Company from any and all damages, liabilities, costs, and expenses (including reasonable attorneys' fees) (collectively, "Losses") resulting from any claim, demand, judgment, or proceeding (collectively, "Claims") brought by a third party alleging that the Instacart Platform infringes or misappropriates any third party intellectual property right. Notwithstanding the foregoing, Instacart will not be liable for any Losses resulting from Claims to the extent that such Claims result from (i) Instacart's use of the Promotional Materials (ii) Company's use of, or access to, the Instacart Platform not in accordance with the terms of these Terms; (iii) modification of the Instacart Platform (other than by Instacart), without Instacart's written consent; or (iv) the combination, operation, or use of the Instacart Platform with other applications, product(s), services, hardware, or materials where the Instacart Platform would not by itself be infringing.

5.2. Indemnification by Company. Subject to Section 5.3, Company will defend, indemnify, and hold harmless Instacart, its affiliates and Advertising Partners, from all Losses resulting from any Claims brought by a third party arising from or in connection with (i) the Promotional Materials, including the infringement of an intellectual property right by any Promotional Materials or allegation that any Promotional Materials are false, misleading, or defamatory; (ii) the Product(s) including product liability allegations, or (iii) breach of any of its representations, warranties, covenants or agreements contained in these Terms. Advertising Partners are intended third party beneficiaries of this section.

5.3. Procedure. The indemnified Party will promptly notify the indemnifying Party of all Claims of which it becomes aware (provided that a failure or delay in providing such notice will not relieve the indemnifying Party's obligations except to the extent such Party is prejudiced by such failure or delay), and will: (i) provide reasonable cooperation to the indemnifying Party at the indemnifying Party's expense in connection with the defense or settlement of all Claims; and (ii) be entitled to participate at its own expense in the defense of all Claims. The indemnified Party agrees that the indemnifying Party will have sole and exclusive control over the defense and settlement of all Claims; provided, however, the indemnifying Party will not acquiesce to any judgment or enter into any settlement, either of which imposes any obligation or liability on an indemnified Party without its prior written consent.

6. LIMITATION OF LIABILITY. INSTACART WILL NOT BE LIABLE TO COMPANY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, DAMAGE TO BUSINESS REPUTATION OR LOST DATA) ARISING OUT OF OR IN CONNECTION WITH THE ATTACHED ORDER FORM. INSTACART'S ENTIRE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE ATTACHED ORDER FORM, WHETHER IN CONTRACT OR TORT, WILL NOT EXCEED THE AMOUNT PAID BY COMPANY TO INSTACART UNDER THE ORDER FORM GIVING RISE TO SUCH LIABILITY IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

7. CONFIDENTIAL INFORMATION. "Confidential Information" shall include any non-public business, technical, financial or other proprietary information a Party (the "Receiving Party") may receive from the other Party (the "Disclosing Party") during the term of these Terms, including the terms and conditions of these Terms. Both Parties agree to hold the other Party's Confidential Information in confidence and not use such Confidential Information except to the extent necessary to exercise its rights or fulfill its obligations hereunder or disclose such Confidential Information to a third party. Each Party may disclose Confidential Information only internally to its employees and independent contractors who have a need to know such information and who are bound by obligations of confidentiality no less protective than those set forth herein. Confidential Information will not include: (i) information that is or becomes publicly available through no fault of the Receiving Party, (ii) was in the Receiving Party's possession or known by it without restriction prior to receipt from the Disclosing Party, (iii) was rightfully disclosed to the Receiving Party by a third party without restriction, or (iv) was independently developed by the Receiving Party without use of any Confidential Information of the other party. A Receiving Party may make disclosures of the Disclosing Party's Confidential Information required by law or court order provided, to the extent legally permissible, it uses reasonable efforts to notify the Disclosing Party so that the Disclosing Party may try to limit disclosure and obtain confidential treatment or a protective order for that Party's Confidential Information.

8. INTELLECTUAL PROPERTY; DATA OWNERSHIP. Company acknowledges and agrees that Instacart owns all right, title, and interest in and to the Instacart Platform, including the Instacart Self-Service Platform, including all derivatives and any modifications, updates, revisions or enhancements thereto, as well the Instacart Data (but excluding the Promotional Materials). Instacart reserves all rights not expressly granted hereunder. For purposes of clarification only, Instacart Data is Confidential Information of Instacart.

9. REPRESENTATIONS AND WARRANTIES. Company warrants that (i) it has the legal authority to enter into these Terms and perform the obligations set forth herein, (ii) it has all necessary consents, licenses, authorizations, and rights needed to provide the licenses herein, and authorized use of the Promotional Materials will not violate any applicable law or any third party agreements; (iii) it will at all times comply with all laws applicable to the performance of its obligations and exercise of its rights under these Terms; (iv) all advertising claims, content, copy, or messages contained in Promotional Materials (whether express or implied) will be accurate, not misleading, and supported by reasonable substantiation; (v) the Promotional Materials will not be false, misleading, defamatory, harassing, or threatening; and (vi) the Promotional Materials will not infringe, misappropriate or otherwise violate the rights of any third party or libel or slander any third party. Further, Company represents and warrants it will not, and will not authorize any third party to, (i) generate automated, fraudulent or otherwise invalid impressions, inquiries, clicks or conversions, (ii) conceal conversions where they are required to be disclosed, (iii) use any automated means or form of scraping or data extraction to access, query or otherwise collect Instacart advertising-related information from any Advertising Platform except as expressly permitted by Instacart, or (iv) attempt to interfere with the functioning of the Services.

10. WARRANTY DISCLAIMER. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, NEITHER PARTY MAKES ANY WARRANTIES REGARDING THE SUBJECT MATTER OF THE ORDER FORM OR THESE TERMS TO THE OTHER PARTY, AND EACH PARTY (ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS), UNLESS OTHERWISE SPECIFICALLY SET FORTH HEREIN, HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY REGARDING SUCH SUBJECT MATTER HEREOF, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

11. TERMINATION. All Campaigns are non-cancellable. Notwithstanding the foregoing, a Party may terminate these Terms if the other Party materially breaches these Terms and fails to cure such breach within ten (10) days after receipt of notice of such breach. Section 4, 6, 7, 8, 9, 10 and 11 will survive any termination or expiration of these Terms.

12. INSTACART PLATFORM; SERVICES.

12.1. Instacart Self-Service Platform. Subject to the terms of these Terms, Instacart may make available to Company an advertising buying platform wherein Company can submit Order Forms on a self-service basis (such platform, the "Instacart Self-Service Platform"). If an Order Form is accepted by Instacart, which Instacart may do in its sole discretion based on factors including but not limited to product eligibility, product relevance, cost per click ("CPC") or CPM bid price, and estimated click-through-rate, Instacart will deliver Promotional Materials as the applicable inventory becomes available. Any Campaign spend or credit available amount visible to Company through the Instacart Self-Service Platform are estimated amounts and Company acknowledges there may be a delay in posting the actual amount in the Instacart Self-Service Platform. Instacart will determine the size, placement, and positioning of such Order Form. Instacart does not guarantee the level of activity Company will receive from such Campaigns, including, but not limited to, number of impressions or clicks Company will receive. Unless otherwise specified within the Instacart Self Service Platform, Company may suspend or cancel Campaigns placed through the Instacart Self-Service Platform at any time within the Instacart Self-Service Platform. Company shall be responsible for its access and use of the Instacart Self-Service Platform, including access and use by its employees. In accordance with these Terms Company shall keep account login and password information confidential and will not disclose such to any third party unless authorized in writing by Instacart. Ad products available on

Instacart Self-Service Platform are subject to any additional applicable product specific terms set forth in Exhibit A hereto.

12.2. Reservation-Based Services. From time-to-time Instacart and Company may agree to certain Services for reservation-based Campaigns through the execution of an Order Form. Each Order Form executed by the Parties shall be subject to these Terms and shall be non-cancellable and nonrefundable upon execution. Subject to the terms of the Order Form, Instacart, at its sole discretion, will determine the placement, location and timeframe for display or distribution of Promotional Materials.

12.3. Feedback. In the event Company provides Instacart any feedback, enhancement requests or recommendations regarding the Services or Instacart Platform ("Feedback"), Company hereby grants to Instacart a worldwide, perpetual, irrevocable, fully paid-up, royalty-free, non-exclusive license to such Feedback, including for use or incorporation into the Services or Instacart Platform, the rights to make derivative works therefrom or to otherwise commercially exploit in any way, without any restriction and without any payment.

12.4. Prohibitions. Company will not, and shall ensure its users will not: (a) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the software used in the Services, including the Instacart Platform; (b) provide, market, lease or lend the Services, including the Instacart Platform, to any third party except as expressly authorized hereunder; (c) remove any proprietary notices or labels displayed on the Services, including the Instacart Platform; (d) create a derivative work of any part of the Instacart Platform; (e) intentionally use the Services, including the Instacart Platform, for any unlawful purpose; (f) use any automated system or software, whether operated by a third party or otherwise, to extract any data from the Instacart Platform; or (g) introduce, post, or upload to the Instacart Platform any Promotional Materials that (i) are illegal under applicable law, rule, or regulation; (ii) violate any third party right, including intellectual property rights, including, without limitation, copyrights, trademarks, patents, and trade secrets; (iii) contains libelous, slanderous, or defamatory material, or material constituting an invasion of privacy or misappropriation of publicity rights; or (iv) promotes unlawful or illegal goods, services, or activities.

12.5. Beta Products; Tools and Materials. During the Term, Instacart may make available to Company certain experimental products and/or features ("Beta Products"). Notwithstanding anything to the contrary herein, Beta Products are provided as-is without any representations, warranties, or covenants of any kind and Company's use of such Beta Products is at its own risk. Instacart reserves the right to modify or remove any Beta Products at any time in its sole discretion. Instacart offers tools and materials to optimize End User and advertiser experience on the Instacart Platform or provide additional context as to the advertising content being presented to the End User. Company agrees such tools and materials may include Company's Promotional Materials or Company Marks.

12.6. Testing. Company acknowledges that during Instacart's provision of the Services, in the ordinary course of business, Instacart may run experiments and tests on the Instacart Platform regarding the placement of advertising. Instacart reserves the right to perform such experiments and tests.

13. General. For all purposes under these Terms each Party will be and act as an independent contractor of the other and will not bind nor attempt to bind the other to any contract. Neither Party will have the right to assign these Terms or the Order Form, in whole or in part, to a third party, except that Instacart may assign these Terms or its rights and obligations hereunder to an affiliate to a successor to substantially all of the assets or business to which these Terms pertains. This contract and any dispute arising hereunder will be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. The parties agree any claims arising out of or related to these terms shall be brought exclusively in the federal or state courts of New Castle County, Delaware, USA and consent to the personal jurisdiction of those courts. An action for breach of these Terms or any other action otherwise arising out of these Terms must be commenced by a party within one (1) year from the date the right, claim, demand, or cause of action first occurs, or such action will be barred forever and waived by such

party. This Order Form and these Terms (and any attachments or exhibits incorporated herein) set forth the entire understanding of the Parties as to the subject matter therein and may not be modified except in a writing executed by both parties. Any notices in connection with these Terms will be in writing and sent by first class US mail, confirmed facsimile or email, or major commercial rapid delivery courier service to the address specified on the applicable Order Form for notice or such other address as may be properly specified by written notice hereunder. In the event of any conflict or inconsistency between any Order Form and these Terms, the Order Form will control.

UPDATED MARCH 7, 2022

Additional Terms for Display Ad Campaign.

The following additional terms shall apply to Company's submission and Instacart's delivery of a Display Ad Campaign (as defined below) (the "**Display Ad Campaign Terms**"):

- 1. Display Ad Campaign Services.** In accordance with the bidding and placement process set forth below, Instacart may deliver display campaign(s) promoting Company's Product(s) (each a "Display Ad Campaign"), which will run on retailer storefronts on the Instacart Platform and other Properties, where such Product(s) are sold and/or where Instacart is permitted to place the Display Ad Campaign. The Display Ad Campaign will run from the Display Campaign Start Date through the earlier of either (i) the completion of the Display Ad Campaign Budget Cap, or (ii) Display Ad Campaign End Date (if any), both as designated in the Instacart Self-Service Platform.
- 2. Bidding and Placement Process.** Company will place bids via the Ads Manager Platform where Company and/or its agents, as applicable, can create new and/or modify existing Order Forms and their associated Campaigns
- 3. Delivery of Display Campaign for Products.** If Instacart accepts Company's bid, and subject to Instacart's review and approval of Promotional Materials, Instacart will promote Company's Products submitted for a Display Campaign in instances where Company wins a first-bid auction for such placement.
- 4. Payment.** Company will pay Instacart on the CPM basis up to the Budget Cap, as set forth for the applicable Campaign. Instacart will invoice Company at the end of each calendar month, and Company shall pay invoice according to the payment terms set forth in the Terms. Notwithstanding anything to the contrary stated in the Terms, Instacart shall not adjust invoices retroactively if Instacart, in its sole discretion, finds an inaccuracy in the billing amount of +/- 1% of the initial invoiced amount.
- 5. Cancellation.** Company may suspend or cancel a submitted bid or Campaign through the Instacart Ads Manager Platform. For the avoidance of doubt, it is the parties' intent that the cancellation right outlined in this Cancellation provision supersedes the first sentence of Section 11 of the Terms solely with respect to the Campaigns governed by this Order Form. Notwithstanding the foregoing, Company is responsible for paying for the Display Ad Campaigns that Instacart runs.

Additional Terms for Sponsored Product.

The following additional terms shall apply to Company's submission and Instacart's delivery of Sponsored Product (as defined below) (the "**Sponsored Product Terms**"):

- 1. Sponsored Product Services.** In accordance with the bidding and placement process set forth below, Instacart may deliver Sponsored Products promoting Company's Product(s) (each, a "Sponsored Product(s)") on the Instacart Platform and other Properties, including but not limited to Search, Browse, Home, and Detail Page locations. Instacart will provide Company Reporting Information, as agreed upon by the Parties, such as number of clicks, CPC, and ROAS.

2. Bidding and Placement Process. Company will place bids via the Ads Manager Platform where Company and/or its agents, as applicable, can create new and/or modify existing Order Forms and their associated Campaigns.

3. Delivery of Sponsored Products. If Instacart accepts Company's bid, Instacart will deliver Sponsored Products pursuant to the placement process. Instacart will determine the size, placement, and positioning of the Sponsored Products. Instacart does not guarantee the activity that Company's Sponsored Products will receive, such as the number of clicks Company's Sponsored Products will get. Moreover, Instacart cannot control how clicks are generated on Company's Sponsored Products. Instacart may, in its discretion, reject or remove any Sponsored Product for any or no reason.

4. Payment. Company shall be charged based on clicks. The amount Company owes will be calculated based solely on Instacart's click measurements. Instacart will invoice Company at the end of each calendar month, and Company shall pay invoice according to the payment terms set forth in the Terms. Notwithstanding anything to the contrary stated in the Terms, Instacart shall not adjust invoices retroactively if Instacart, in its sole discretion, finds an inaccuracy in the billing amount of +/- 1% of the initial invoiced amount.

5. Cancellation. Company may suspend or cancel a submitted bid or Campaign through the Instacart Ads Manager Platform. For the avoidance of doubt, it is the parties' intent that the cancellation right outlined in this Cancellation provision supersedes the first sentence of Section 11 of the Terms solely with respect to the Campaigns governed by this Order Form. Notwithstanding the foregoing, Company is responsible for paying for the Sponsored Products that Instacart runs.