

# GENERAL STANDARD TERMS AND CONDITIONS

for Advertising Business in Online Media

of

**wdv Gesellschaft für Medien & Kommunikation mbH und Co. OHG**  
and Companies Belonging to the Publishing Group

## 1. Scope

The offer by wdv Gesellschaft für Medien & Kommunikation mbH & Co. OHG is aimed exclusively at entrepreneurs and public institutions. Orders from consumers within the meaning of Section 13 of the German Civil Code (BGB) shall be excluded.

## 2. Advertising order

2.1 An advertising order within the meaning of the following General Standard Terms and Conditions is the agreement between the advertiser or party placing advertising (customer) and wdv Gesellschaft für Medien & Kommunikation mbH & Co. OHG (provider) relating to placement of advertising in information and communications services, in particular in online media, for the purpose of dissemination.

2.2 Unless there are other individual arrangements to the contrary, these General Standard Terms and Conditions alone shall apply to the advertising order for advertising business in online media, and the provider's rate card effective at the time the agreement was concluded shall apply. Differing or additional terms and conditions of the customer shall not be binding, even if the provider has not explicitly objected to them.

2.3 In the case of orders that do not relate to placement of advertising in online media, but in other media (especially print) or relate to other products, the respective general standard terms and conditions for the medium or product in question shall apply, unless specified otherwise in the individual case.

## 3. Advertising

3.1 Advertising within the meaning of these General Standard Terms and Conditions may comprise, for example, an image and/or text, tone sequences and/or moving images (including banners), or a sensitive area which, when clicked on, establishes a connection with further data in the sphere of the customer by means of an online address specified by the customer (e.g. a link).

3.2 Advertising that is not directly and visibly apparent as such due to its content or design shall be clearly indicated by the provider as being advertising. That is usually done by indicating the advertising with the word "Advertisement" and/or by sectioning it off from the editorial content.

3.3 In principle, formats specified in the applicable rate card are available for placing advertising. Special formats and special forms of advertising can be placed only after consultation with and subject to the consent of the provider.

## 4. Conclusion of agreements

4.1 Unless there are other individual agreements to the contrary, the advertising order shall be formed upon confirmation of the order placed in writing or by e-mail. The provider shall not be liable for communication errors in cases where orders are placed, amendments are made or more detailed specifications are given verbally or over the phone.

4.2 If advertising agencies place orders, the advertising order is concluded with the advertising agency in cases of doubt. If an advertiser is to be the customer, it must be named by the advertising agency. Appropriate proof of this client relationship must be submitted to the provider upon request.

4.3 Advertising for goods or services from more than one advertiser or other party placing advertising within a website (e.g. pop-up ads, banner) shall require additional agreement in writing or text form.

## 5. Deadline for completion

If no period of time for calling off the advertising for publication has been agreed in the advertising order, the advertising is to be called off for publication within one year from the date on which the agreement is concluded. If the customer has been granted the right to call off individual advertising as part of an advertising order, the order shall be completed within one year of the agreement being concluded.

## 6. Increases to the scope of orders

The customer is entitled, within the time limit specified in Section 5, to call off further advertising over and above the quantity stated in the advertising order, provided there is available capacity and subject to a payment to be agreed separately. The provider shall give the customer confirmation if the scope of an order can be increased.

## 7. Postponements and cancellation

7.1 Bookings for advertising that is not yet running can only be cancelled free of charge no later than two weeks before the originally agreed publication of the advertising (start of insertion) and shall be subject to capacity being available and the consent of the provider. After the above deadline, 20% of the order value shall be due in the event of a postponement.

7.2 Bookings for advertising that is not yet running can only be cancelled free of charge no later than two weeks before the start of insertion of the advertising and must be cancelled at least in text form. If said deadline is not heeded, 20% of the order value shall be charged.

7.3 Bookings for advertising involving forms of cooperation (such as advertorials, contests, etc.) that are not yet running can be cancelled free of charge up to three weeks before the start of insertion. If this deadline is not met, 30 % of the order value shall be charged.

7.4 Technical costs incurred up to the time a booking is cancelled shall be charged to the customer in full.

## 8. Refunding of discounts

8.1 If an advertising order is not fulfilled due to reasons for which the provider is not responsible, the customer shall, without prejudice to any further legal obligations, reimburse the provider for the difference between the discount granted and the discount corresponding to the volume of advertising actually purchased

8.2 Unless otherwise agreed, the customer shall be entitled to a discount on the advertising it has actually purchased within a year if, at the beginning of the period, it has concluded an advertising order under which it is entitled to a discount pursuant to the rate card from the outset. The entitlement to the discount shall expire if it is not claimed from the provider within three months after the end of the one-year period.

## 9. Supply of data

9.1 The customer shall be obliged to supply proper, error-free and suitable advertising complying with the formats and technical specifications defined by the provider within the set deadlines. Any deviations must be agreed immediately with the provider in writing or by e-mail. Costs for editing of or changes to the advertising that have been requested by the customer or for which the customer is responsible shall be borne by the customer.

9.2 The provider shall not be obliged to disseminate the advertising if the advertising is not supplied in the proper form, in particular if it is incomplete, contains errors or is unsuitable, or if the advertising is supplied late. If visibly unsuitable or damaged copies are supplied on time, the provider shall request replacement.

9.3 The customer shall provide materials sent in digital form that are free of computer viruses or other sources of damage. The provider shall exclude damaged or infected files from being used and reserves the right to assert claims for damages if it incurs damage as a result of damaged or infected files. The provider shall not be responsible for failure to meet publication deadlines due to the fact that the files cannot be used.

9.4 The provider's obligation to store advertising shall end three months after it was last disseminated. The provider shall not assume any responsibility for the supplied advertising or other materials, and shall return them to the customer only at the latter's separate request and expense.

## 10. Placement

10.1 Unless otherwise agreed individually, the customer shall not be entitled to placement of the advertising at a specific position on the website in question or compliance with a specific time when the website in question can be accessed. Repositioning of the advertising within the agreed environment shall be possible, if such reorganisation does not have any significant influence on the impact of the advertising.

10.2 It not possible to rule out that competitors of the customer insert advertising in the same online medium or on the same Internet site during a period of time identical to that specified in the advertising order. The provider does not therefore grant any exclusion of competition.

## 11. Complaints

In the case of mutual commercial transactions, the customer shall check the advertising as soon as they are first published and report any defects without delay. Hidden defects must be reported as soon as they are discovered. If the customer fails to report defects on time, the advertising shall be regarded as having been approved. In such a case, the customer shall bear the costs of any subsequent changes it requests.

## 12. Warranty of title by the customer

12.1 The customer warrants that it holds all the rights required to place the advertising. The provider shall not be obligated to examine the advertising for possible violations of the law. The customer shall bear sole responsibility for the content and legal permissibility of the advertising and shall indemnify the provider against any claims by third parties that may arise because of an infringement of statutory regulations as part of the advertising order, even if it should be cancelled. Moreover, the provider shall be indemnified against the costs of any legal defence necessary in such cases. The customer shall be obliged to support the provider in good faith by providing information and documents to defend against claims by third parties.

12.2 The customer shall assign to the provider all rights of use, neighbouring rights and other rights under copyright law, without any restrictions as regards location, that are required to use the advertising in all types of online media, including the Internet, in particular the right to reproduce, disseminate, transfer and send it, make it publicly accessible, remove it from a database and call it off, to the extent necessary in terms of time and content for fulfilment of the advertising order. The above rights shall authorise the provider to insert the advertising using all known technical methods and all known forms of online media.

12.3 If the provider has performed visual and technical design of the advertising on behalf of the customer, any use of the original copy of it for the purpose of publication elsewhere shall be permitted only with the provider's explicit consent.

## 13. Warranty by the provider

13.1 The provider warrants, within the scope of foreseeable requirements, the suitable reproduction of the advertising in compliance with the customary technical standard. However, the customer is aware that it is not possible in accordance with the state of the art to create a program that is completely free of errors.

13.2 There shall not be an error in presenting the advertising in particular if the impairment is caused by use of unsuitable software and/or hardware (e.g. browser) for presenting it, by problems in the communications networks of other operators or by computer failure at third parties (e.g. other providers), by incomplete and/or not updated offerings on proxies (caches) or by failure of the ad server not lasting longer than 24 hours (consecutively or cumulatively) within 30 days of the beginning of the contractually agreed period for insertion of the advertising. If the ad server fails for a considerable period of time as part of a time-linked fixed booking, the customer shall not be obligated to pay the remuneration for the period for which the failure lasted. Further claims shall be excluded.

13.3 If the quality of reproduction of the advertising is inadequate, the customer shall be entitled to reduce the payment or demand replacement advertising that is free of defects, but only to the extent to which the purpose of the advertising was impaired. If replacement advertising fails or the provider cannot reasonably be expected to

provide replacement advertising, the customer shall have the right to reduce the payment or cancel the advertising order.

13.4 If there are any defects in the advertising supplied by the customer, the customer shall not have any claims if it is not published adequately. The same shall apply in the case of errors in relation to advertising that is repeatedly inserted, if the customer does not point out the error before the next time the advertising is published.

13.5 Complaints about hidden defects must be asserted by giving the provider notification in writing or in text form within one year as of the start of the statutory period of limitation, otherwise within four weeks of the advertising being inserted for the first time.

#### **14. Authorisation to reject and block orders**

14.1 The provider reserves the right to reject or block advertising orders or individual call-offs as part of an order if the consent of the publisher is missing, or the order is rejected or deemed unreasonable for publication due to its content, origin or technical form on the basis of the consistent and objectively justified principles of the publisher. This shall also apply to orders placed with branch offices, receiving offices or representatives. Block advertising orders shall be binding on the publisher only after a binding advertising specimen has been received and approved. The advertising specimen must be received no later than four working days before the acceptance deadline. The same shall apply if the customer itself makes subsequent changes to the content of the advertising or the data referenced by a link and so the conditions specified in Sentence 1 are met.

14.2 The customer shall be informed if an advertising order is rejected or blocked. In such a case, the customer shall be authorised to supply the provider with an amended version of the advertising to be inserted and/or the target URL to which the link is to refer within the deadlines specified in Section 7(1). The costs incurred as a result shall be paid by the customer. If the customer cannot supply the amended version on time, the provider shall retain its entitlement to the agreed remuneration even if the advertising is not inserted. The onus to prove that no or less damage has been incurred lies with the customer.

#### **15. Default in performance**

If an advertising order can no longer be carried out for reasons for which the provider is not responsible, such as for program-related or technical reasons, in particular due to computer failure, force majeure, strikes, pursuant to statutory regulations, due to disruptions that lie in the sphere of responsibility of other providers, network operators or other service providers or for similar reasons, the advertising order shall be carried out subsequently where possible. The provider shall still be entitled to its remuneration if the advertising order is subsequently carried out within a reasonable and acceptable period of time after the disruption has been eliminated.

#### **16. Liability**

16.1 Liability on the part of the provider for breach of duty through slight negligence shall be excluded, except in the case of violation of cardinal contractual obligations, damage resulting from injury to life, body or health, violation of warranties, or claims under the German Product Liability Law (Produkthaftungsgesetz). The same shall apply to vicarious agents of the provider.

16.2 In the case of violation of cardinal contractual obligations, the provider shall be liable for any negligence up to the amount of the foreseeable damage, but at most up to the price of the advertising.

16.3 Claims for loss of prospective profits, expenses saved, claims for damages by third parties and other indirect consequential damage cannot be demanded.

16.4 Liability towards merchants due to gross and slight negligence and, in the case of vicarious agents who are not legal representatives or executive employees, also due to wilful intent, shall always be limited to damage that is usually and typically foreseeable, but at most up to the price of the advertising.

#### **17. Rate cards**

17.1 The provider's rate card valid at the time the order is placed shall apply. The provider reserves the right to amend the rate card subsequently. The provider shall announce price increases for confirmed orders at least one month before the advertising is published. In the event of price increases, the new rates shall also apply to current orders with immediate effect. The customer shall have the right to cancel the agreement in the event of a price increase. The provider must receive notice of such cancellation in writing or text form within 14 calendar days of the customer receiving notification of the price increase.

17.2 The prices specified in the rate card are net and subject to the respective statutory value added tax.

17.3 Discounts shall be as defined in the applicable rate card. Discounts for advertisements shall be granted only on advertising of an advertiser that is published within one year. The period of time for discounted orders shall commence when the first advertisement eligible for a discount is published.

17.4 Advertising agencies and other advertising brokers shall be obliged to adhere to the provider's rate cards in their offers to, agreements with and billing of advertisers. The agency commission granted by the provider may not be passed on to customers, either in full or in part. Commission shall be paid only to the advertising brokers acknowledged by the provider.

17.5 Where joint discounting is claimed for group companies, prior written confirmation that an equity interest of more than 50% is held in them is necessary.

#### **18. Invoicing and delay in payment**

18.1 Invoices shall be submitted at the start of the advertising's insertion. The invoice shall be paid within the deadline stated on it, unless a different payment deadline or advance payment has been expressly agreed in the individual case.

18.2 If payment is made by non-cash means, the customer's payment obligation shall not be fulfilled until the amount is credited unconditionally to one of the provider's accounts. The provider shall be authorised, even if the customer directs otherwise, to first offset payments against the customer's older debts, then against the costs, then against interest and finally against the principal claim.

18.3 If the payment deadlines are not met, the customer shall be in delay in payment as of the date the payment is due, without the need for an additional reminder.

18.4 If there is a delay in payment or a deferment in payment is granted, interest at the statutory rate and collection costs shall be charged. In the event of a delay in payment, the provider can defer further fulfilment of the current order until payment is made and demand advance payment for the other advertising. If there are justified reasons to doubt the customer's solvency, the provider shall be authorised, even during the term of an adverti-

sing order, to make publication of further advertising contingent on advance payment of the amount and on settlement of outstanding invoice amounts, without regard to any originally agreed period for payment.

## **19. Termination**

19.1 Advertising orders must be terminated in writing or by e-mail.

19.2 The right to terminate the agreement extraordinarily shall remain unaffected. The provider shall be authorised to terminate the agreement extraordinarily if, in particular, the customer does not meet its payment obligation despite having been reminded twice, the customer continues to violate cardinal obligations of these General Standard Terms and Conditions despite a warning to desist, the advertising infringes third-party rights, or the customer has changed the advertising or target URL on its own without authorisation.

19.3 If the agreement is terminated extraordinarily, the provider can discontinue insertion of the advertising or individual call-offs with immediate effect. If the agreement is terminated extraordinarily by the provider, the customers shall, without prejudice to any further legal obligations, reimburse the difference between the discount granted and the discount as calculated for the actual insertion of the advertising or individual call-offs after termination.

## **20. Duty of the provider to furnish information**

Unless otherwise agreed, the provider shall supply figures on how many times the advertising has been accessed, which the customer can call up within 10 business days of the advertising order having been executed.

## **21. Data protection**

21.1 The advertising order shall be carried out in compliance with applicable data protection regulations. The customer undertakes to comply with the contents of the provider's privacy statement, in the form it is available in on the provider's website.

21.2 If advertising allows personal data to be collected, the customer alone shall be the controller within the meaning of data protection law and as such shall bear sole responsibility for ensuring compliance with data protection requirements under the European General Data Protection Regulation (GDPR) and other relevant data protection laws and shall indemnify the provider from any liability in this respect. The provider shall not process data on behalf of the customer.

21.3 The agreement data/order data shall be stored for the purpose of fulfilling the insertion order and subject to the statutory retention periods. Personal data shall be processed in order to carry out pre-contractual measures or for the performance of an agreement (Article 6 paragraph 1 point (b) GDPR) and also to safeguard legitimate interests (Article 6 paragraph 1 point (f) GDPR), such as for directly addressing customers, unless use of the data has been objected to.

## **22. Place of jurisdiction and applicable law**

22.1 The place of performance shall be the place of the provider's registered offices.

22.2 German law shall apply exclusively, to the exclusion of the United Nations Convention on Agreements for the International Sale of Goods (CISG).

22.3 The competent court of law for all disputes from or in connection with advertising orders shall be the place where the publisher has its registered offices.

## **23. Final provisions**

23.1 In the event of any dispute, the provisions of these General Standard Terms and Conditions shall have precedence over the provisions of the rate card, discount scales and the cash discount.

23.2 Any amendments or modifications to these General Standard Terms and Conditions shall only be valid when given in writing. Additional verbal agreements shall not be valid until confirmed by the provider in writing.

23.3 Sending of an e-mail shall also meet the requirement for written form specified in these General Standard Terms and Conditions.

23.4 If a provision in these General Standard Terms and Conditions is or becomes invalid, this shall not affect the validity of the other provisions in these Terms and Conditions. Any invalid provision shall be replaced by one that corresponds as closely as possible to the intended meaning of the invalid provision. The same shall apply if these General Standard Terms and Conditions contain a gap that needs to be filled.