

General Terms of and Conditions for Advertising with MediaWelt GmbH, the Publishing Company

1. Scope

1.1 All agreements with the Publishers concerning advertisements and supplied loose inserts shall be subject to the following terms and conditions, to the exclusion of all others. Upon signing the first contract, the Publishers and Client shall agree to make these terms and conditions binding on all future orders too, including such as are placed by telephone. The Client's terms of purchase or other terms and conditions shall apply only to the extent that they do not contradict the terms and conditions below.

1.2 These terms and conditions shall apply accordingly to all orders for tip-ins, bind-ins, special technical variants, electronic advertising and other forms of advertising.

2. Definitions

2.1 An "advertising order" for the purposes of the following terms and conditions is a contract between the Publishers and the Client for the publication of the Advertiser's advertisement or advertisements, electronic or other advertising (hereinafter called "advertisements") in a newspaper or magazine with the aim of disseminating the same.

2.2 A "contract" is an agreement to publish several advertisements, taking account of the discounts to which the Client is entitled according to the rate list valid at the time the order was placed. It is then up to the Client to call forward publication as it sees fit.

3. Calling forward and Placing Orders

If the Client has signed a contract entitling it to call forward the publication of an advertisement as it sees fit, the order as a whole must nevertheless be executed within one year of the publication of the first advertisement, assuming the first advertisement was called forward and published no later than one year after the contract was signed.

4. Publication and Right of Refusal

4.1 The Publishers reserve the right to reject advertisements

– whose content is in breach of the law or other official regulations or

– whose content is the subject of an official complaint lodged with the Deutsche Werberat [German Advertising Inspection Board] or

– whose content, design, origin or technical form are such that the Publishers cannot reasonably be expected to publish them.

4.2 Advertisements that contain advertising for third parties (combined advertisements) always require the Publishers' prior written consent and are subject to a surcharge. Clients shall be notified immediately in the event of a rejection.

5. Third-party Rights, Utilization Rights

5.1 The Client shall ensure that it possesses all the rights required to insert the advertisement in question. The Client shall exempt the Publishers from all third-party claims raised in connection with the advertising order as well as any costs the Publishers incur to defend themselves against such claims. The Client undertakes, to the best of its knowledge and in good faith, to help the Publishers defend themselves against such claims by providing any information and documents that may be of relevance.

5.2 The Client shall transfer to the Publishers any rights of duplication and publication needed to place the advertisement in accordance with the terms of the advertising order.

6. Proofs

6.1 The Client shall be responsible for the accuracy of the returned proofs. The Publishers shall take into account all those corrections of which they were notified prior to the closing date for advertisements or within the time limit specified when the proofs were sent out.

7. Advertising Copy, Order Processing

7.1 The Client undertakes to submit the (digital) advertising copy by the deadline specified and in accordance with the Publishers' technical specifications. The Client shall bear the costs of any corrections required. If, owing to the Client's failure to honour this commitment, insertion proves impossible, this shall not affect the Client's payment obligations.

7.2 The Publishers shall flag any advertisements that are not readily recognizable as such by appending the word "Advertisement."

7.3 The Publishers shall select the position of each advertisement at their discretion, as far as possible taking account of the Client's best interests.

7.4 The Publishers are at liberty to publish competitors' advertisements as well.

7.5 Advertising copy shall be returned only if expressly requested. The Publishers undertake to retain advertising copy for no longer than three months after the advertisement was first published.

8. Guarantee

8.1 The standard of reproduction agreed, the quality of the advertising copy permitting, is that customary for advertisements and other forms of advertising in the magazine in question, as specified in the current media data for the said magazine and in the order confirmation. This presupposes that the Client complies with the Publishers' specifications for the creation and transmission of advertising copy.

8.2 If an advertisement does not meet the agreed standard, the Client shall be entitled to a reduction of the payment due or to a fault-free replacement advertisement, but only to the extent that the purpose of the original advertisement was impaired. The Publishers are entitled to refuse to insert a replacement advertisement if

– this would entail outlays which, in view of the Publishers' culpability and the principle of good faith, would be out of all proportion to the injured party's claim to reparation, or

– this would be possible only at what would be an unreasonably great expense for the Publishers.

If the Publishers allow the grace period for a replacement advertisement to lapse without taking action or if the replacement advertisement is not fault-free, the Client shall be entitled to a reduction of the payment due or to a cancellation of contract. There shall be no claim to a cancellation of contract in the event of minor faults.

8.3 The Publishers' liability, as provided for in No. 9, shall not be affected by the above.

9. Liability

9.1 The Publishers shall be liable for any damages the Client suffers as a result of intent or gross negligence on the part of the Publishers or of senior employees or vicarious agents of the same.

9.2 Irrespective of the degree of culpability, the Publishers shall be liable for claims to damages ensuing from

– the failure of the Publishers, or of senior employees or vicarious agents of the same, to honour an obligation of fundamental importance to the performance of contract, or

– product liability law, or

– non-negligible organizational culpability on the part of the Publishers, or

– insidious deceit on the part of a legal representative, senior employee or vicarious agent of the Publishers or from the Publishers' failure to reproduce the advertisement as guaranteed, or

– injury to life and limb caused by failure to honour an obligation on the part of the Publishers or of a legal representative, senior employee or vicarious agent of the same.

9.3 The Publishers shall be liable for the full amount of the damages due in the event of gross negligence or intent. In all other cases, the Client's claims shall not exceed the damages ordinarily paid in such cases and, unless otherwise agreed, shall be limited to 5% of the order value. The Publishers' liability under product liability law shall not be affected by this.

9.4 The Publishers shall not be liable in cases other than those specified above, irrespective of the legal basis for the claims made.

9.5 Claims for damages against the Publishers shall lapse 6 months after they arise, unless they rest on an unlawful or intentional act.

9.6 In those cases in which the Publishers cannot be held liable, this preclusion of liability shall also apply to the personal liability of the Publishers' senior staff, employees, co-workers, representatives and vicarious agents.

10. Rates

10.1 All the prices quoted in the Publishers' current rate list are subject to value-added tax at the rate prevailing on the date of invoice (only Germany).

10.2 The Client shall refund the Publishers for any costs incurred for corrections of the advertising copy requested or occasioned by the Client.

10.3 Advertising agents and advertising agencies are bound to adhere to the Publishers' rate lists in all their quotations, contracts and invoices issued to advertisers.

10.4 In the event of a revision of advertising rates, the new rates shall apply to current orders only if announced by the Publishers at least one month prior to publication of the advertisement or other form of advertising. If the rates increase, the Client shall be entitled to a cancellation of contract. This right must be exercised in writing within 14 days of the receipt of the notice of increase.

10.5 Discounts shall not be granted to those companies whose business it is to place insertion orders for various advertisers with the aim of obtaining a discount.

10.6 Written proof of affiliation must be provided before affiliates can be granted a joint discount. Affiliates, for the purpose of these terms, are companies that hold a stake of more than 50 percent in each others' equity.

10.7 If a Client fails to call forward an advertisement once or more than once for reasons for which the Publishers are not responsible, the Client shall refund the Publishers for the difference between the discount actually granted and that due to it on the basis of the advertisements actually published (discount refund). This shall not affect the parties' other contractual rights and obligations. Unless agreed otherwise, the Client shall have a retroactive claim to the discount applicable for the number of advertisements actually published within a given year.

11. Payment

11.1 The invoice is payable within the period specified in the rate list unless payment in advance or other terms have been agreed. Discounts for prior payment shall be granted according to the rate list.

11.2 In the event of a delay in payment or respite, interest on the arrears and collection costs shall be charged. The Publishers shall be entitled to defer further execution of the order until payment is made and to demand payment in advance for any remaining advertisements.

11.3 If the Publishers have just cause to doubt the Client's solvency, they shall be entitled to make the publication of any further advertisements provided for in the contract dependent upon payment in advance and the settlement in full of any amounts outstanding, irrespective of the terms of payment originally agreed.

12. Assignment and Offsetting of Claims

12.1 The Client may not assign any claims ensuing from the advertising contract to third parties without the Publishers' prior written consent.

12.2 The Client can offset its claims on the Publishers only if the demand in question is undisputed or enforceable by law.

12.3 A right of retention can be claimed only if the Publishers' demand for payment and the Client's counterclaim are based on the same contract.

13. Stoppages and the like

In the event of stoppages, acts of God, industrial disputes, seizure, traffic disruptions, shortages of energy or raw materials and other such events for which the Publishers are not responsible – whether these affect the Publishers' operations or those of other companies, whose services are crucial to the Publishers' ability to honour their commitments – there shall be no liability for late performance or impossibility. In such cases, the Publishers shall be entitled to the payment in full of all the advertisements published, as long as 80% of the average sold – or otherwise promised – circulation for the past four quarters is delivered. If the circulation delivered is lower than this, the invoice amount shall be reduced by the same percentage as that by which the circulation actually delivered falls short of that promised by the Publishers.

14. Place of Performance, Jurisdiction

14.1 The place of performance and sole place of jurisdiction shall be the Publishers' domicile.

14.2 Disputes arising from the Publishers' business dealings with merchants, judicial persons under public law or special funds under public law shall be settled at the court with jurisdiction for the Publishers' domicile. Any claims on non-merchants that cannot be settled by dunning shall be brought before the court with jurisdiction for the non-merchant's domicile.

14.3 If the Client's domicile or ordinary residence, including that of non-merchants, is unknown at the time an action is brought or if the Client has relocated or its ordinary residence has moved outside the territory covered by the law since signing the contract with the Publishers, the place of jurisdiction shall be the Publishers' domicile.