

VDZ proposal for

Standard Terms and Conditions
for Advertising in Magazines and
their Electronic Editions

1. Insertion Order

1.1. "Insertion Order" means the contract between the publisher (hereinafter the "Publisher") and the customer for the publication of print or other advertisements of an advertiser as the customer (hereinafter the "Customer") in magazines, ePapers or eMagazines for purposes of dissemination.

1.2. "ePaper" is an edition of a newspaper or magazine published exclusively in electronic form, whose editorial and advertising content (irrespective of any additional functions arising directly from functional technical options, such as links) is largely identical to that of the print edition of the same name and which, with respect to the advertisements contained therein, is marketed together with the print edition.

1.3. "eMagazine" is an edition of a publication published exclusively in electronic form, whose editorial and advertising content is generally independent (even of the content of any print edition of a magazine of the same name) and which, with respect to the advertisements contained therein, is marketed independently (irrespective of any print edition of the same name).

2. Print and other advertisements

2.1. An advertisement may consist of one or more of the following elements:

- an image or text;
- sound sequences and moving images;
- a sensitive area which, when clicked, links to other Customer or third-party information via an online and mobile address specified by the Customer.

2.2. Advertisements which are not recognisable as such because of the layout shall be identified by the Publisher as advertising.

2.3. As a rule, the formats listed on the applicable rate card may be used for publication of advertisements. Special ad formats may be permitted subject to consultation and review by the Publisher.

3. Order

3.1. "Order" means a contract for the publication of multiple advertisements providing for a discount to be granted to the advertiser pursuant to the rate card; the respective advertisements are inserted upon request by the Customer (ad request). Discounts shall not be granted to companies whose corporate purpose includes placing insertion orders for multiple advertisers in order to claim a group discount. If a given Order permits individual ad requests, the Order must be settled within one year from the date of the first advertisement's publication, provided the first advertisement is requested and published within one year from the date on which the Order was placed.

3.2. If any ad requests under a given Order are not performed due to circumstances for which the Publisher is not at fault, the Customer shall, notwithstanding any other legal obligations, pay the difference between the discount granted and the discount corresponding to the number of advertisements actually placed. Unless agreed otherwise, the Customer shall have a retroactive claim to the discount corresponding to the actual number of advertisements it placed within a given year.

3.3. If a group discount is claimed for group affiliates, the advertiser shall submit written proof of its group affiliate status. Group affiliates within the meaning of this provision are entities in which another entity holds an interest of least 50%.

In the case of corporations, group affiliate status shall be proven by confirmation by an auditor or by submitting the most recent annual report and in the case of partnerships, by submitting an extract of the commercial register.

Proof must be submitted on or before the close of the insertion year. Proof submitted later may not be recognised retroactively.

Group discounts must in any case be expressly confirmed in writing by the Publisher.

Group discounts shall only be granted for as long as the group affiliate status is held. The expiry of group affiliate status must be reported promptly; the group discount will expire along with group affiliate status.

4. Millimetres of advertising space

In calculating the volume of advertising space purchased, millimetres of advertising copy lines shall be converted into millimetres of advertising space at the appropriate rate.

5. Right of refusal

5.1. The Publisher reserves the right to reject advertisements as well as individual ad requests under a given Order, where:

- the content thereof violates the law or other official provisions; or
- the content thereof was objected to by the German Advertising Standards Council (*Deutscher Werberat*) in a complaint proceeding; or
- it would be unreasonable for the Publisher to publish it due to the content, design, source or technical form thereof; or
- the advertisements contain advertisements of or for third parties.

5.2. Orders for advertisements in magazines shall be binding on the Publisher only after it has received and approved the proof.

5.3. Advertisements that contain advertising of or for third parties ("Tie-in Advertising") must in each case be accepted in advance by the Publisher in writing. The Publisher may charge a premium for Tie-in Advertising.

The Customer shall be notified promptly if any advertisement is rejected.

5.4. The Publisher may temporarily suspend the insertion of an advertisement in electronic editions if it has sufficient reason to suspect that the website to which the hyperlink in the advertisement refers has unlawful content. The foregoing shall apply in particular in cases involving investigations by government agencies or a warning letter from an alleged injured party, unless this is clearly unfounded. The Customer

shall be notified of the suspension and shall promptly remove the allegedly unlawful content or shall demonstrate or, where applicable, prove the lawfulness thereof. The Publisher may offer the Customer to replace the advertisement with another advertisement and/or a hyperlink to another website. The Publisher may at its discretion charge the Customer for any additional proven costs incurred as a result. The suspension shall be lifted as soon as the suspicion has been allayed.

5.5. The Publisher may in particular retract an advertisement that has already been published from the electronic edition if the Customer subsequently changes the content thereof without discussing this with the Publisher first or changes the link's URL or where the content of the linked website is materially changed. In such case, the Customer has no right to a replacement at no charge, although the Publisher will retain its agreed payment claim.

6. Ad materials for magazines

6.1. If a Customer has specific preferences as to the positioning of the advertisements, the Order must be received by the Publisher promptly enough to allow it to notify the Customer before the submission deadline if the Order cannot be processed as requested. Classified ads shall be printed in the appropriate section without any express agreement between the parties being required.

6.2. The Customer shall bear sole responsibility for delivering suitable ad materials or other advertisements in magazines on time and in defect-free condition. For delivery of digital ad materials, the Customer shall deliver proper - i.e., corresponding in particular to the format and the technical requirements of the Publisher - ad proofs in due time prior to the insertion start date.

6.3. The Customer shall bear the Publisher's costs for any changes to the ad materials requested by the Customer or for which it is responsible.

The parties agree that to the extent the ad materials so allow, the print or other advertisements shall be of a quality customary for the particular magazine for which advertising space has been booked in accordance with the specifications in the rate card and the order confirmation. The foregoing shall apply only if the Customer com-

plies with the Publisher's requirements for preparing and transmitting the ad materials.

6.4. If the publication of the advertisement fails to reflect the contractually owed quality or service, the Customer shall have a claim to reduction of the contract price or to a defect-free replacement advertisement, albeit it only to the extent that the purpose of the advertisement was compromised.

6.5. The Publisher may refuse to insert a replacement advertisement where:

- under terms of contract and principles of good faith this would involve efforts on the Publisher's part that are grossly disproportionate to the Customer's interest in the performance of the contract; or
- this could only be accomplished at unreasonable cost to the Publisher.

If the Publisher fails to meet any reasonable grace period set by the Customer or if the replacement advertisement is again not defect-free, the Customer may claim a reduction in the contract price or rescind the contract. The right of rescission shall be excluded for minor defects in the advertisement. Warranty claims for latent defects must be asserted within one year from the date on which the statutory limitation period commences.

7. Providing advertisements for electronic editions

7.1. The Customer shall submit to the Publisher by e-mail complete defect-free and appropriate advertisements for electronic editions (banners, target URL, ALT text and any advertising schedules) in the final digital form no later than 5 business days prior to the agreed first publication date. For special forms of advertising, the applicable period shall be 10 business days.

7.2. If the data files are stored on the Customer's server or a third-party server, the Customer shall notify the Publisher, in compliance with the aforementioned conditions, of the URL of the advertisement to be inserted.

7.3. Any deviations herefrom shall be promptly co-ordinated with the Publisher in text form. The aforementioned shall also apply *mutatis mutandis* for the addresses specified by the Customer, to which the advertisement is to refer.

7.4. The Publisher shall request replacements for any clearly inappropriate or defective advertisements. If the advertisement is not provided in proper form, specifically if it is supplied late or subsequently changed, the Publisher shall not warrant for the agreed dissemination thereof.

7.5. If, after the aforementioned periods have expired, the Customer wishes to replace or change the advertisement or deviate from any existing advertising schedule, then the Publisher shall check whether such changes can still be made in view of the originally scheduled publication date. If this is not the case, the terms originally agreed shall apply.

8. Warranty and liability

8.1. Within the framework of foreseeable requirements, the Publisher warrants the best possible reproduction of the advertisement commensurate with customary technical standards in each case. The warranty shall not cover minor defects. However, the Customer is aware that based on the current state of the art technology it is not always possible to reproduce an advertisement that is completely free of defects. The reproduction of the advertisement shall not be deemed defective where the defect is caused:

- by use of unsuitable display software or hardware (e.g. browsers) of the user or the Internet service provider; or
- where the impairment in reproducing the advertisement does not materially impair the purpose thereof; or
- by disruptions in the communications networks (e.g., including, for example, but not limited to, network failures or power outages) at the Publisher or other operators; or
- by computer failure due to system or network failure; or
- by incomplete offers and/or offers not updated and stored on proxy servers or in the local cache; or
- by failure of the Publisher's ad server, the duration of which may not exceed 24 hours (continuous or in the aggregate) over a 30-day period from the commencement of the contractually agreed insertion.

8.2. The warranty shall not include disruptions arising from computer defects or interrupts on the Customer's end or in the communication channels between the Customer and the Publisher's servers.

8.3. If the Publisher's ad server goes down for a substantial period of time (more than 10% of the booked period) during which the Customer has booked advertising space for a fixed period, the Publisher shall endeavour to make good the underdelivery at a later time. If the makegood fails, the Customer shall be excused from its payment obligations for the underdelivery or for an average of the media services not required during that period. Further claims are excluded.

8.4. The Publisher shall not bear the risk of data loss during transfer thereof outside the sphere of its control nor does it assume any warranty and/or liability for data security. Risk shall pass upon receipt of the advertisement on one of the Publisher's servers.

8.5. The Publisher shall rectify any material server disruptions or defects as soon as possible and shall endeavour to eliminate immaterial impairments within a reasonable period.

8.6. The Publisher is under no obligation to verify the accuracy, completeness or quality of the advertisements or the content thereof or whether they are up-to-date, serious and/or error free and assumes no express or implied warranty or liability therefor.

8.7. The Publisher shall be liable for compensatory damages only:

- in cases of wilful or grossly negligent conduct or the lack of a warranted quality;
- in all other cases involving the breach of a material contractual obligation, default or impossibility of performance, the Publisher shall be liable for reasonably foreseeable damage, but not for any special accidental damage or indirect or consequential damage. As against merchants, liability shall in any case be limited to ordinary and gross negligence and in the case of its vicarious agents who are not legal representatives or executive employees, to wilful conduct for reasonably foreseeable damage and damage not within the Customer's con-

trol. To the extent a material contractual obligation within the aforementioned meaning was negligently breached, the Publisher's liability shall be limited to the amount of the fee it received or would have received for inserting the respective advertisement.

8.8. The foregoing shall not affect liability for damage caused by injury to life, limb or health or under the German Product Liability Act (*Produkthaftungsgesetz*).

8.9. The Customer may not base any of its damages claims on defects unless the Publisher was at fault for such defects pursuant to § 276, § 278 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB).

8.10. Other than in cases of wilful or grossly negligent conduct, the Publisher shall not be liable for quality or possibility of access, the display quality, for memory failure, interrupts or any delay, deletion or failed transmission during communication.

8.11. Section 8.10. shall not apply in states and jurisdictions which prohibit the exclusion or limitation of liability for consequential or accidental damage.

8.12. To the extent they are not based on wilful conduct, any and all claims asserted against the Publisher based on the breach of a contractual duty shall become time-barred one year from the date on which the statutory limitation period commences.

8.13. In the case of interruptions in operations or events of *force majeure*, unlawful labour disputes, unlawful confiscation, traffic disturbances, general shortages of raw materials or energy and the like, be it within the Publisher's organisation or that of a third-party which the Publisher engages in the performance of its obligations, the Publisher has a claim to full payment of the published advertisements, provided that 80 % of the average paid or otherwise guaranteed circulation of the relevant publication over the last four quarters has been distributed by the Publisher. In the case of a lower distribution, the invoice amount shall be reduced proportionately in accordance with the disparity between the paid or guaranteed circulation and the actual distributed circulation.

9. Payment period

Unless another payment period or a pre-payment has been agreed in writing in the individual case, invoices shall be paid within the period indicated on the rate card. Any discounts for pre-payments shall be granted in accordance with the rate card.

10. Default in payment

In the event of default in payment or deferral, the standard bank interest and collection costs shall be charged. If the Customer is in default in payment, the Publisher may stop further execution of the current Order until such time as payment has been remitted and may request payment in advance for the remaining advertisements. If the Publisher has legitimate doubts as to the Customer's ability to pay, it may, even during the term of a contract, make the the publication of further advertisements contingent on advance payment of the amount by the ad submission date and on payment of outstanding invoice amounts, regardless of whether payment within a specific period was originally agreed.

11. Specimen copy of advertisements in magazines

Upon request, the Publisher shall provide a specimen copy of magazine advertisements. Depending on the nature and scope of the Insertion Order, ad clippings, specimen pages, or complete specimen issues shall be provided. If a specimen copy can no longer be obtained, the Publisher shall issue a legally binding receipt to document the publication and dissemination of the advertisement.

12a. Decline in circulation

Subject to the provisions under section 16b and as stipulated in sentence 2, in the case of an Insertion Order for multiple advertisements, a decline in circulation may operate to entitle the Customer to a price reduction if the guaranteed circulation fails to be reached over the total average of the insertion year commencing with the publication of the first advertisement. A decline in circulation shall constitute a defect entitling the Customer to a price reduction only if and to the extent circulation declines at least 20% for a guaranteed circulation of up to 50,000 copies;

at least 15% for a guaranteed circulation of up to 100,000 copies;
at least 10% for a guaranteed circulation of up to 500,000 copies;
at least 5% for a guaranteed circulation of over 500,000 copies.

The foregoing shall not apply to any decline in circulation for reasons specified in section 23.

The guaranteed circulation shall be the average circulation specified in the rate card or otherwise or, where no circulation has been specified, the average paid (in the case of trade journals, this may be the average actually distributed) circulation during the prior calendar year.

Claims for a price reduction shall also be excluded for Orders where the Publisher had informed the Customer of the decline in circulation in time for the Customer to rescind the contract prior to publication of the advertisement.

12b. Special provision for a decline in circulation relating to publications publishing issue-related circulation data

Contrary to section 12a, in the case of publications which publish issue-related circulation data, a decline in circulation shall only result in a price reduction if and to the extent it exceeds 10% for a guaranteed circulation of up to 500,000 copies and 5% for a guaranteed circulation of over 500,000 copies. The foregoing shall not apply to any decline in circulation for reasons specified in section 23.

The basis for the guaranteed circulation shall be the total paid circulation as defined by the German Audit Bureau of Circulations (*Informationsgemeinschaft zur Feststellung der Verbreitung von Werbeträgern e. V.*, "IVW"). It is calculated for the insertion year from the average circulation of the four quarters prior to the insertion year to the extent the Publisher did not state an absolute number as the guaranteed circulation in the respective rate card.

A price reduction claim presupposes that the Customer's Order is subject to a discount based on the volume scale and for a minimum of three issues.

The price reduction shall be calculated on an order-per-company basis to the extent the parties did not agree to billing based on brands to be defined upon placement of the Order.

The potential price reduction shall be calculated as the balance of the over and under circulations of the booked issues within the insertion year.

The refund shall be effected at the close of the campaign based on the customer net

and factoring in the agency fee already granted in the form of a credit for additional advertising space or, where this is not possible, in cash. A refund claim shall only exist if the refund amount is at least EUR 2,500.

13. Classified display advertisements

13.1. In the case of classified display advertisements (box ads), the Publisher shall exercise the due care of a prudent merchant in holding and forwarding responses. Responses received by registered or express mail shall be forwarded by regular mail only. Responses to box ads shall be held for four weeks. Responses which are not picked up in this period will be destroyed. The Publisher will return valuable documents, although it is under no obligation to do so.

13.2. The Customer may by individual agreement authorise the Publisher as its agent to open incoming responses on its behalf and in the express interests of the Customer. The Publisher's forwarding service shall not include letters exceeding the accepted DIN A 4 format (weight ...g) or any shipments of goods, books, catalogues or packages and delivery thereof will not be accepted. The parties may however agree to acceptance and forwarding by way of exception in those cases where the Customer assumes the fees and charges arising therefrom.

14. Jurisdiction and governing law

14.1. Place of performance shall be the Publisher's registered office.

14.2. Legal forum for actions filed in the context of business transacted with merchants, legal entities under public law or with respect to public-law funds shall be the Publisher's registered office. To the extent claims of the Publisher are not asserted in the context of default actions, the legal forum for non-merchants shall be their respective place of residence.

14.3. If at the time an action is filed, the place of residence or habitual abode of the Customer, whether or not it is classified as a merchant, is unknown, or if after entering into the contract the Customer relocated its place of residence or habitual abode

outside the jurisdiction of the law, the legal forum shall be the Publisher's registered office.

15. Advertising brokers and advertising agencies

Advertising brokers and advertising agencies shall adopt the Publisher's rate card in their quotes, contracts and invoices with advertisers.

16. Rate changes

Changes in rates for Insertion Orders already placed shall be valid *vis-à-vis* companies provided the Publisher gave them notice thereof at least one month prior to the publication of the print or other advertisement. In such case, the Customer may rescind the agreement, provided it does so in text form within 14 business days following receipt of notification of the rate increase.

17. Grant of rights and representations and warranties

17.1. The Customer warrants that it holds all rights necessary to publish the advertisement. The Customer shall bear sole responsibility for the content and lawfulness of the texts and image materials provided for the publication as well as for the other advertisements delivered. The Customer shall indemnify the Publisher against any and all third-party claims that may arise due to the violation or infringement of statutory provisions under the Insertion Order. The Customer shall furthermore indemnify the Publisher against any costs it may incur for necessary defence of its rights. The Customer shall act in good faith to assist the Publisher in its efforts to defend against third-party claims by providing documents and information.

17.2 The Customer shall bear sole legal responsibility, specifically the responsibility under competition law, for the content of any and all advertisements provided. It shall carefully check to ensure that the content does not violate or infringe any laws and warrants that the content of the respective advertisement does not impair the rights of any third parties. The Customer warrants that it will not disseminate or refer to any immoral content during the contractual relationship.

17.3. The Customer shall transfer to the Publisher any and all copyright licences, ancillary and other rights which are necessary in order to use the advertising in all types of print and online media, specifically including the right to reproduce, disseminate, transmit, broadcast, make publicly available, remove from a database and retrieve, and which are transferable to third parties in the context of performing the contract in the scope necessary for implementing the order both in terms of the substance and duration of such rights. The aforementioned rights shall in all cases be transferred with no territorial limits. The aforementioned rights authorise insertion using all known technical means and all known forms of online media.

18. Data privacy

18.1. The Customer is hereby advised pursuant to the German Telemedia Act (*Telemediengesetz*, "TMG"), the German Federal Data Protection Act (*Bundesdatenschutzgesetz*, "BDSG") as well as other data privacy provisions, that the personal data provided by it in the context using the Publisher's services and in particular provided for processing and confirming the Order will be stored in machine-readable format, processed and used solely for those purposes for which the Customer provided said data - unless the Customer has authorised another form of use - and for purposes of invoicing and payment.

18.2. The Publisher may collect, process, store and use the personal data of the Customer or the potential customer in the context of confirming and processing an Order and in the context of processing inquiries as to capacity to the extent necessary in order to provide the Customer with the insertion and use of the Publisher's services and in order to effect invoicing. The Publisher may furthermore access these for purposes of maintaining its operational capability. The Publisher shall ensure that such data is kept confidential.

18.3. The Customer may, at any time following written request, inspect at no charge its personal data stored at the Publisher.

18.4. Pursuant to the TMG and the BDSG as well as other data privacy provisions, the Publisher shall, subject to any other consent granted, use the Customer's data of

which it becomes aware in the course of use only for fulfilling the purposes of these Standard Terms and Conditions; it shall observe data secrecy and bind its employees to a corresponding duty of confidentiality to the extent required by law.

18.5. In order to be able to determine whether the offer is of interest to the Customer and if it can be improved, non-personal data of a general nature, in particular statistical data on the use of online and mobile services of the Publisher is collected. Surveys are also conducted and data and information from the server protocol files are consolidated on a comprehensive basis and used for statistics and analyses.

18.6. In an effort to structure the offer even more effectively, the Customer consents to the Publisher, as a participant in leading market research projects, transmitting its data on gross advertising revenues at the product level to the entity conducting such research for publication, provided such entity guarantees that the data will be used solely for advertising statistical purposes.

(These Standard Terms and Conditions are recommended but are not binding to the extent the parties elect to agree otherwise.)

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