

**VDZ proposal for  
Standard Terms and Conditions  
for Advertising in Digital Media**

**1. Insertion Order**

"Insertion Order" means the contract for the publication of any advertisement(s) of an advertiser as the customer (hereinafter the "Customer") in digital media\* of the publisher/agency (hereinafter the "Publisher") for purposes of disseminating the advertisement. Insertion Orders shall be governed solely by these Standard Terms and Conditions together with the applicable rate cards and technical ad specifications.

**2. Advertisement**

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 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.

\*excluding ePaper and eMagazine, which are governed by the Standard Terms and Conditions for Advertising in Newspapers and Magazines and their Electronic Editions.

### **3. Conclusion of contract and booking terms**

3.1. Contracts may be concluded for each individual advertisement or for a given number of advertisements. Contracts may stipulate fixed dates for individual publications or individual orders may be settled on demand over a given period; cf. section 4.

3.2. Unless specifically agreed otherwise, formation of contract shall generally require:

- the offer to conclude a contract submitted by the Customer in text form;
- and acceptance of the order by virtue of the Publisher's order confirmation in text form or by virtue of publication of the advertisement. Confirmations given orally or by phone shall not be legally binding.

3.3. To the extent advertising agencies place orders, and subject to any other agreements in writing, the contract shall be formed with the advertising agency itself, i.e., the advertising agency shall be the Publisher's counterparty pursuant to these Standard Terms and Conditions. Orders by advertising agencies or brokers shall only be accepted for advertisers designated and identifiable by name. The Publisher may request that the advertising agency submit an original copy of the letter of engagement and also submit proof of its agency status.

3.4. Invoicing shall be effected based on the rate card or Publisher's calculation. Invoicing for the advertising delivered shall be based on the ad impressions (AIs) according to the Publisher's ad server. An AI is defined as a server request for an advertisement from the Publisher's ad server.

### **4. Settlement period**

4.1. To the extent a contract is concluded for a number of advertisements, these must be requested for publication within one year of concluding the contract. If a given contract permits individual ad requests, the entire order must be settled within one year from the date of the first advertisement's publication, provided the first advertisement was requested and published within the period specified in sentence 1. If

the one-year period specified in sentence 1 or sentence 2 is not complied with, the Customer shall reimburse the Publisher the difference between the discount granted and the discount corresponding to the number of advertisements actually placed, subject to other legal obligations, see section 15.6.

4.2. If the Customer switches agencies during the the settlement period for a given contract, the Publisher will assume that the former agency has transferred to the new agency the contractual relationship along with all rights and duties arising thereunder. In such case, failure to object to further settlement of the contract with the new agency shall constitute consent thereto by the Publisher.

## **5. Postponement**

Postponing the agreed commencement of a campaign may only be effected in text form up to five business days by 2.00 p.m. prior to the next agreed publication date and is subject to available capacity. The current conditions and rates published online shall apply with respect to the new insertion date.

## **6. Increase of the Insertion Order**

In the context of advertising contracts, the Customer may within the period agreed or specified in section 4 ,and subject to available capacity, submit further ad requests in text form even exceeding the volume specified in the respective Insertion Order, provided the Publisher confirms this in text form.

## **7. Cancellation**

Insertion Orders may be cancelled in text form and at no charge only up until no later than three weeks prior to the advertisement's scheduled publication. Cancellation orally or by phone is not permitted.

## **8. Publication period, positioning data and rotation**

8.1. The publication period shall be determined individually based on the impressions booked or based on the period booked and the impressions booked.

8.2. The Customer shall have no claim to any specific positioning of the advertisement on the digital medium. The Customer and the Publisher shall jointly agree on the positioning of the advertisement. If this cannot be achieved, the Publisher shall decide at its due discretion, taking into account the Customer's interests as far as possible. If the Customer has expressed no specific preference as to the positioning of the advertisement on the digital medium booked by it, the confirmation of the Publisher, in the scope specified in the order, shall be controlling.

8.3. If several advertisements are delivered for a booking, the Publisher shall rotate these on a standard basis, unless the Customer has provided the Publisher an advertising schedule setting out when which advertisement is to be published.

## **9. Provision of the advertisement**

9.1. The Customer shall submit to the Publisher by e-mail complete defect-free and appropriate advertisements (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.

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

9.3. 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 and to which the advertisement is to refer.

9.4. 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, and in particular shall not warrant for attainment of the booked AIs.

9.5. 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 continue to apply.

9.6. The number of delivered advertisements or requests to change the advertisements or those provided by notification of the URL must be reasonably proportionate to the booked media service taking industry standards into account; the assessment of reasonableness shall be made by the Publisher. The Publisher shall notify the Customer if and to the extent it determines that it is not reasonable.

9.7. The Publisher assumes no liability for the delivered advertisement or any other materials nor is it under any obligation to return these to the Customer. The Publisher may, but is not required to, archive the advertisements indefinitely.

9.8. If the order cannot be executed due to failure to provide proper advertisements, specifically failure to deliver on time or to deliver defect-free and appropriate advertisements, and the Publisher, despite reasonable efforts, is unable to arrange for a replacement booking by a third party, the Customer shall be liable to pay compensation equivalent to the agreed fee.

## **10. Right to reject, retract or suspend publication**

## **of the advertisement**

10.1. The Publisher may terminate Insertion Orders until such time as the Customer submits the advertisement and the Publisher approves it. The Publisher furthermore reserves the right to reject advertisements as well as individual ad requests under a given Insertion Order, where:

- the content thereof infringes the rights of third parties, 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, form, design, source or technical quality thereof; or
- the advertisement contains advertising for third parties.

10.2. Advertisements that contain advertising of or for third-parties ("Tie-in Advertising") must in each case be accepted in advance by the Publisher in text form. The Publisher may charge a premium for Tie-in Advertising in accordance with the rate card. The Customer shall be notified promptly if the contract is terminated pursuant to sentence 1 or an advertisement is rejected pursuant to sentence 2.

10.3. The Publisher may temporarily suspend the publication of the advertisement 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 or orders 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 an alternative advertisement and/or with a hyperlink to another website subject to the periods under section 9.1. 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.

10.4. The Publisher may in particular retract an advertisement that has already been published 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.

## **11. Grant of rights and representations and warranties, compliance with statutory provisions**

11.1. 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 online media, specifically including the rights 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.

11.2 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.

11.3. The Customer represents and warrants that it holds all rights necessary to place the advertisement. The Customer shall indemnify the Publisher upon first demand against any and all third-party claims that may arise due to the violation or infringement of provisions of competition law, criminal law, copyright law or any other statutory provisions. The indemnification shall also extend to any expenses incurred for mounting a legal defence against third parties. 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. The Publisher shall notify the Customer if any such third-party claims are asserted.

## **12. Warranty and liability**

12.1. 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 (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.

12.2. 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.

12.3. 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 or extend the period of the insertion, provided this does not conflict with the Customer's interests. If the makegood or extension of the insertion period 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.

12.4. If at the end of the publication period actual delivery has not reached the level of the media services guaranteed by the Publisher, the Customer shall be entitled to a compensatory booking. Upon expiry of the original insertion period, the work shall be deemed completed within the meaning of § 646 German Civil Code (*Bürgerliches Gesetzbuch*, "BGB").

12.5. The Publisher's count shall be controlling for determining the media services. The Customer has the option to prove that the Publisher's count is incorrect and that other figures must be applied. The Customer must notify the Publisher thereof in text form within ten days. To the extent the advertisement is delivered via the Publisher's servers, notification must be effected within three months. The notice period shall commence in a given case when the notification of the media services is sent to the Customer. If upon conclusion of a campaign the overall delivery deviates from the total guaranteed delivery by more than 10% and this is due to technical or human error on the part of the Publisher, then the Customer's data shall apply, provided said data proves such technical or human error.

12.6. If the Publisher is at fault for insufficient reproduction quality of the advertisement, the Customer may claim a reduction in the contract price or insertion of a replacement advertisement, albeit only to the extent of the impairment. If extending the publishing period or publishing a replacement advertisement fails or is unreasonable, the Customer may claim a reduction in the contract price or may rescind the contract with respect to the portion of the media service not yet performed; any right of rescission is otherwise excluded.

12.7. 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 se-

curity. Risk shall pass upon receipt of the advertisement on one of the Publisher's servers.

12.8. If the advertisements are not on a server of the Publisher but are delivered via a third-party server (redirects) and the Customer, as described in section 9.2, provides the Publisher with the advertisement by sending the advertisement's URL on the Customer's or a third-party server, then the Publisher assumes no warranty and no liability for the delivery of the data via the Internet or for any other risks arising therefrom, such as for the defect-free delivery and quality of the advertisement and data security.

12.9. 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.

12.10. 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.

12.11. 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 control. 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.

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

12.13. 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 BGB.

12.14. 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.

12.15. Section 12.14. shall not apply in states and jurisdictions which prohibit the exclusion or limitation of liability for consequential or accidental damage.

12.16. The Customer shall be liable for any and all consequences and adverse effects the Publisher suffers due to abuse or unlawful use of the services or due to the Customer's failure to meet any of its other obligations under these Standard Terms and Conditions.

12.17. The above sections also apply to representatives of the Publisher pursuant to a contractual or intercompany relationship as well as to their vicarious agents.

12.18. To the extent the Publisher is obliged to pay damages, it shall place the Customer in the position it would have been in had the contract not been concluded (reliance damages); damages for non-performance are excluded.

12.19. 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 etc., 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 for the published advertisements.

### **13. Notice of defects**

In the case of reciprocal commercial transactions, the Customer shall inspect the inserted advertisement promptly following the first insertion and shall give notice of any defects without undue delay. The notice period in the case of such commercial transactions shall commence upon insertion of the advertisement in the case of patent defects, and in the case of latent defects upon their discovery. If the Customer fails to give notice of defects, the insertion of the advertisement shall be deemed approved.

#### **14. Fees, rate card and targeting criteria**

14.1. The fee for the Publisher's services shall generally be determined based on the rate card applicable on the date of publication which is published online.

14.2. The rates quoted are net of statutory VAT.

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

14.4. Targeting criteria itemised by advertising medium shall be summarised in an overview. For each targeting criterion, the CPM (cost per thousand impressions) shall increase by the amount reported in each case, provided no separate CPMs for targeting campaigns have been reported.

#### **15. Discounts**

15.1. Discounts shall be granted purely on the publication of the advertisement; special costs that arise, such as in the case of changes to the advertisement, are excepted herefrom.

15.2. Based on the Publisher's rate card, revenue-based discounts on "revenue", the so-called "customer gross", will be granted pursuant to the discount scale.

15.3. Discounts shall be granted in the form of credit in the corresponding amount. Cash payments shall only be made if, after a period of at least three months, no further Insertion Orders are placed with the Publisher.

15.4. The agency fee is 15% of contract amount after any and all deductions excluding VAT.

15.5. If the Customer is a group affiliate and claims a joint discount ("Group Discount"), the Customer 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, in the case of partnerships, by submitting an extract of the commercial register. Proof must be submitted on or before the end of the order year. Proof submitted later may not be recognised retroactively. Group Discounts must in any case be expressly confirmed by the Publisher in text form. 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.

15.6. If an order is not performed due to circumstances for which the Publisher is not at fault, the Customer shall, notwithstanding any other legal obligations, pay the Publisher the difference between the discount granted and the discount corresponding to the number of advertisements actually placed.

## **16. Payment terms**

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.

## **17. Default in payment**

17.1. 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 outstanding insertions. If the Publisher has objectively founded doubts as to the Customer's ability to pay, it may, even during the term of the contract, make the the publication of further advertisements contingent on advance payment of the amount and on payment of outstanding invoice amounts, regardless of whether payment within a specific period was originally agreed.

17.2. In the case of Insertion Orders from an advertising agency, the advertising agency shall upon formation of the contract assign its payment claims against the agency's customers as security to the Publisher, which hereby accepts the assignment. The Publisher may disclose the assignment of claims as security to the agency's customers if the agency commissioning the order is in default for payment of the invoices by at least 30 days.

## **18. Termination without notice for cause**

The Publisher may terminate the agreement in writing without notice for cause in particular where:

- the Customer fails to meet its payment obligation despite having been issued two payment reminders;
- the Customer has already once in the past unilaterally changed the advertisement or the target URL;
- The Customer continues to breach material provisions of these Standard Terms and Conditions despite written warning;
- the Customer engages in improper conduct directed at a third party by using the Publisher's offer for unlawful purposes or for purposes of harassing third parties.

In the event of termination without notice for cause, the Publisher may discontinue the publication of the advertisement or advertisements. In the event of termination

without notice for cause by the Publisher, the Customer shall, notwithstanding any other legal obligations, reimburse the Publisher the difference between the discount granted and the discount as calculated following termination based on the advertisement or advertisements actually published.

## **19. Data privacy**

19.1. 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 of the Insertion 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.

19.2. 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 access these for purposes of maintaining its operational capability. The Publisher shall ensure that such data is kept confidential.

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

19.4. 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.

19.5. 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 consolidated on a comprehensive basis and used for statistics and analyses.

19.6. 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.

## **20. Jurisdiction and governing law**

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

20.2. 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. Any and all legal relationships arising out of or in connection with this Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

20.3. If at the time an action is filed, the place of residence or habitual abode of the Customer 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, then the legal forum agreed shall be the Publisher's registered office.

## **21. Miscellaneous**

21.1. If the Customer sends or otherwise provides its own standard terms and conditions to the Publisher prior to or after concluding the contract or makes reference

thereto, said terms and conditions shall expressly not apply to the extent they conflict with the Standard Terms and Conditions of the Publisher or were not approved by the Publisher. Specifically, any failure on the part of the Publisher to object to or reject the terms and conditions of others shall not cause them to be deemed agreed.

21.2. The Publisher reserves the right to amend these Standard Terms and Conditions as well as the rate card at any time. Amendments to the Standard Terms and Conditions or rates for confirmed Insertion Orders shall be valid provided they have been announced by the Publisher at least one month prior to publication of the advertisement. In such case, the Customer may rescind the agreement, provided it does so in text form within 10 business days following receipt of notification of a rate increase.

21.3. Any amendments or supplements to these Standard Terms and Conditions must be executed in writing to be valid; the forgoing shall also apply to any amendment of this writing requirement.

21.4. Should any provision of these Standard Terms and Conditions be or become invalid, this shall not affect the validity of the remaining provisions hereof. The invalid provision shall be replaced by a valid provision that most closely reflects the commercial intent of the invalid provision.

21.5. In the event of any conflicts, the provisions of these Standard Terms and Conditions shall supersede those of rate cards, discount scales, targeting criteria, etc.

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

March 2012