

General terms and conditions of business for adverts and other advertising materials

The following general terms and conditions of business shall regulate the relationship between Börsenmedien AG, represented by the board member Bernd Förtsch (Chairman), Am Eulenhof 14, 95326 Kulmbach, entered in the commercial register of Bayreuth Local Court (Amtsgericht Bayreuth) under commercial register B 2954 - hereinafter referred to as the Publisher - and the Client in case of the issuing and performance of advert engagements and orders concerning other advertising materials.

I. Conclusion of the contract

1. A contract between the publisher and the client in respect of the publication of one or more adverts, advertising materials or technical special publications (hereinafter referred to only as advert) of a client in a printed form marketed by the publisher - in print or online format - for the purpose of distribution shall come into existence by means of the ordering of the advert by the client and confirmation by the publisher in text form. The printing of the advert by the publisher shall also represent a confirmation - in such a case, no declaration of acceptance shall be required on the part of the publisher.
2. The contracting partner of the publisher shall be either the (direct) client of the agency of an agency client. In case of agency clients, the agency must provide notification prior to conclusion of the contract in case of acting on behalf of another party that the booking should take place in the name of and on the account of the agency client. Without a timely notification, the contractual relationship shall come into existence with the acting Agency.
3. Should an (agency) client change the agency during the ongoing contractual relationship, the (agency) client or the agency must ensure that the contractual relationship is assigned to the new agency with all rights and obligations. The publisher shall hereby either declare its agreement in text form or shall perform the contractual relationship with the new agency without objection.
4. The publisher shall also reserve the right to immediately reject adverts or individual retrievals of adverts should their contents breach laws or official regulations or should their publication not be reasonable for the publisher due to the contents, design, origin or technical form or should these contain adverts of persons other than the client or for third parties.

II. Performance of the contract

1. The client shall be solely responsible for the timely delivery and the flawless quality of suitable print documents.
2. In case of the delivery of digital print documents, the client shall be obliged to deliver proper templates, in particular templates which correspond to the format or technical guidelines of the publisher in good time prior to the start of placement. Costs of the publisher in respect of changes to print documents which are requested by the client or for which the client is responsible shall be borne by the client.
3. Prior to a digital transfer of print documents, the client shall ensure that the transferred data is free from computer viruses.
4. Digitally transferred print templates for colors are only permitted to be reliably processed with a color proof delivered on paper, which the client must deliver prior to the deadline.
5. The publisher shall not be obliged to check the print documents for completeness and correctness and shall not incur liability for transfer errors.
6. The client hereby guarantees that it possesses the necessary rights for the placement of the advert. It shall be exclusively responsible for the contents and lawfulness of the text and picture documents provided for insertion, as well as for the delivered advertising materials. The client shall also be obliged to release the publisher from third party claims which are brought against it in connection with performance of the engagement. The publisher shall not be obliged to check whether orders and adverts infringe third party rights.
7. The client shall transfer to the publisher all necessary copyright for the use of the advertising in print and online media of all types, in particular the right to duplicate, distribute, make publicly accessible. The said transfer of copyright shall be unlimited in terms of location and to the necessary extent in terms of time and content for the performance of the order. In addition, the client hereby permits the publisher to make its adverts publicly accessible on the websites of the publisher and its title and, if applicable, as part of the paper issue(s) and other expenditure related updates, as well as to duplicate and distribute these offline.
8. Print documents shall only be returned to the client if specifically requested. The storage obligation shall be three months after the first publication of the advert.
9. In case of doubt adverts or also individual retrievals must be retrieved within one year of conclusion of the contract, unless an agreement to the contrary has been concluded between the publisher and the client.
10. Adverts which contain advertising of third parties or for third parties ("joint advertising"), shall require the prior declaration of acceptance of the publisher in text form in each individual case. Joint advertising shall entitle the publisher to charge a connection surcharge.
11. Advertising supplement orders shall not be binding for the publisher until after the submission of a sample of the supplement and its approval. Supplements which give the reader the impression of being part of the newspaper or magazine due to the format or presentation shall not be accepted.
12. Placement instructions shall only be valid if these are confirmed by the publisher in writing. The publisher shall retain the right to use overwraps which cover advertising motifs on the cover pages.
13. Adverts which are not recognizable as such due to their design shall be clearly identified as such by the publisher with the word "advert".
14. Advertising motifs which are designed for the client by the publisher may only be used for adverts in the issues booked by the publisher for this purpose. Additional rights of use must be agreed with the publisher separately.
15. The publisher shall reserve the right to postpone publication dates and to deliver the printed matter prior to the first day of sale. The client shall not be entitled to any claims against the publisher as a result.
16. The publisher shall deliver a copy of the advert or a confirmation concerning the publication and distribution of the advert to the client.

III. Prices and payment terms

A. Prices and payment terms

1. The respective fee stated in the price list of the publisher at the time of conclusion of the contract shall apply. All named prices shall be subject to the statutory value added tax. The publisher shall be entitled to amend the price list at any time with effect for the future. Price changes for issued and ongoing advert engagements shall be effective if these are notified by the publisher at least one month prior to publication of the advert; in such a case, the client shall have a right of termination. This must be exercised by the client in text form within 14 days of receipt of the amendment notification concerning the price increase.
2. The invoice amount shall be due within 14 days of the date of the bill. In case of payment within 10 days, a 2% discount will be granted. Discount deductions shall only be possible if all due invoices have been settled; otherwise, payments shall be set off against the respective oldest claim. If applicable, discount deductions shall be requested.
3. Should the client fail to pay the invoice within a deadline of 30 days from the date of the bill, it shall enter default in accordance with § 286 Paragraph 3 of the German Civil Code (BGB) in case of payment default, warning fees and default interest to the amount of 8 percentage points above the base rate of interest will be charged otherwise, the legal consequences shall be in accordance with § 288 of the German Civil Code (BGB).
4. Should the client fail to comply with its payment obligations, the publisher shall be entitled to refuse to provide performance in full or in part until payment of the amounts due or the provision of security. In case of justified doubt concerning the payment capacity of the client, also during the term of an advert engagement, the publisher shall also reserve the right to make the publication of additional adverts dependent on the advance payment of the amount on the advertising deadline, regardless of an originally agreed payment deadline.
5. At the time of coming into existence of the advert, the engaging agency shall assign its payment entitlement against the agency client in this respect to the publisher as security. The publisher hereby accepts the said assignment. The publisher shall be entitled to disclose the said assignment of security to the agency client, should the engaging agency be in default of more than 30 days in respect of settlement of the invoice of the publisher.
6. The client may only set off with claims which are recognized by a court or which have been acknowledged by the publisher in writing. A right of retention of the client shall be excluded.
7. In case of default, the open claims shall be pursued by a collection agency or via a lawyer. The costs incurred as a result shall be borne by the client. Further services of the publisher shall not be performed until after settlement of all claims against prepayment in respect of new clients, our services shall only be performed against prepayment.

8. Cancellation of advert engagements following the advertising deadline or the respective advert shall be charged to the client to the sum of 25% of the respective gross invoice amount, whereby the client shall be able to provide proof that lower losses or expenses were incurred by the publisher.
9. Payments shall be made expense free to the bank account stated in the invoice.

B. Discounts and reduction reimbursement

1. The publisher shall reserve the right to also grant to the engaging agency such discounts and reductions which are independent of the individual advert engagement or (agency) client. Unless expressly stated otherwise, the discount tables in the prices lists shall relate to the circuits for an (agency) client per year of insertion. Should the joint rebate be claimed for companies which belong to the group, the written confirmation of a capital shareholding of at least 50 percent shall be necessary. A trade discount of ten percent shall only be granted in case of engagements which are issued directly.
2. Should an engagement not be fulfilled for reasons for which the publisher is not responsible, then regardless of any additional legal obligations, the client shall reimburse the publisher the difference between the granted rebate and that which corresponds to the actual acceptance. The reimbursement shall not apply should the non-fulfillment be due to force majeure in the area of risk of the publisher. Unless otherwise agreed, the client shall have a retrospective entitlement to a rebate which corresponds to its actual acceptance of adverts within one year.
3. The agency fee granted to the agency by the publisher may not be forwarded on to the (agency) client in full or in part. The advertising agency and agencies shall be obliged to comply with the price list of the publisher in their offers, contracts and invoices with the (agency) client.

IV. Warranty

1. The usual quality of the adverts within the framework of the options of the print documents in accordance with the details in the price list and in the order confirmation is hereby agreed.
2. Minor color and tone value deviations may occur in the printing process. Test samples will only be forwarded on request. The client shall be responsible for the correctness of the returned samples. The publisher shall take into account all error corrections of which it is notified until the advertising deadline or within the deadline set at the time of sending of the sample.
3. Should the publication of the advert not correspond to the quality prescribed under the contract, the Client shall be entitled to reduction or the placement of an error-free replacement advert, however only to the extent that the purpose of the advert was impaired. In particular, a deviation from the quality prescribed under the contract shall not be present
 - in case of minor color and tone value deviations
 - in case of deviations in the color reproduction due to differences in the paper quality
 - in case of minor register differences.
4. A claim to reduction shall also not exist
 - if the client does not comply with the binding technical guidelines of the publisher concerning the creation and transfer of print documents
 - if the client does not point out the error in case of adverts which are published repeatedly prior to the printing of the next advert
 - if digitally transferred print templates for color adverts are delivered without color proof.
5. In addition, the publisher shall have the right to refuse a replacement advert should this require expenses which, under consideration of the concluded contract and the principle of good faith represents a gross imbalance to the service interest of the client or this would only be possible for the publisher with disproportionately high costs.
6. Should the publisher fail to comply with a reasonable deadline set to it for the replacement advert or the publication of the other advertising, or should the replacement advert once again be defective, the client shall have the right of reduction or termination of the advert engagement. In case of insignificant defects, termination of the advert engagement shall be excluded.
7. Complaints must be asserted in relation to the publisher immediately.
8. In case of a contract in respect of more than one adverts, a claim to price reduction shall exist in case of a circulation reduction if the year of insertion which commences with the first advert as a total average falls below the average circulation named in the price list or by other means of the previous calendar year. A circulation reduction shall only represent a defect which gives rise to an entitlement to a price reduction if it amounts in case of a circulation of up to 50,000 copies 20 v.H, in case of a circulation of up to 100,000 copies 15 v.H and in case of a circulation of 200,000 copies 10 v.H. In addition, in case of contractual conclusions, price reduction claims shall be excluded if the publisher has informed the client of the reduction of the circulation in such good time that the client was able to rescind or terminate the contract prior to publication of the advert.
9. The publisher shall not be responsible and shall not incur liability for any disruption or delay to the fulfillment of any part of this contract which is connected to events for which the publisher is not responsible, including strikes or labor disputes. Should the said events last for more than 30 days, the publisher and the client shall have the right to rescind the contract with immediate effect by means of a declaration of rescission in relation to the respective other party, without any claims to the reimbursement of any damage or losses being substantiated.

V Liability

1. The publisher shall incur liability to pay damages if
 - a. the liability is mandatory in accordance with applicable laws, for example in line with the German Product Liability Act (ProdHaftG) or in case of injury to life, body or health, if the publisher breaches a significant contractual obligation (cardinal obligation) or culpably breaches a guarantee or if
 - b. the loss is due to grossly negligent or intentional behavior on the part of the publisher.
2. In all other cases, the liability of the publisher for losses shall be excluded, regardless of the legal basis. In particular, the publisher shall not be liable for indirect losses, loss of profit or other pecuniary losses of the client.
3. In all cases, the liability shall be limited to compensation of the loss which is typical of the contract and foreseeable, which does not, as a rule, exceed the remuneration of the advert engagement. The said restriction of liability shall not apply to Paragraph 1 a).
4. The exclusion of liability and limitation of liability in accordance with the paragraphs above shall also apply in respect of the personal liability of the employees and vicarious agents of the publisher.

VI Closing provisions

1. German law shall exclusively apply to these general terms and conditions of business and the relationship between the client and the publisher. The place of jurisdiction shall be the place of business of the publisher, provided that this can be agreed in accordance with the German Code of Civil Procedure (Zivilprozessordnung) and the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Cases (EuGVVO).
2. These general terms and conditions of business regulate the relationship between the publisher and the client in respect of issuing and performance of advert engagements. These general terms and conditions of business shall apply exclusively in this respect. This shall also apply if the terms and conditions of business of the client are not expressly objected to or if the publisher provides its service without objection. The validity of any general terms and conditions of business of the client shall be excluded, unless these agree with our general terms and conditions of business. Agreements between the publisher and a client which deviate from these general terms and conditions of business shall require written form to take effect; this shall also apply in respect of annulment of the written form requirement.
3. The publisher shall be entitled to amend these general terms and conditions of business with effect for the future at any time. The respective currently agreed general terms and conditions of business of the publisher at the time of conclusion of the contract shall apply.
4. Should one of the provisions of these general terms and conditions of business be or become ineffective, this shall not affect the validity of the remaining clauses. The ineffective or unenforceable provision shall, in such a case, be replaced by the parties by an effective clause which comes as close as possible to the economic purpose of the ineffective or unenforceable provision. The same shall apply in case of a contractual loophole.
5. The assignment of claims to which the client is entitled in connection with the business relationship shall be excluded.
6. The parties shall treat the contents of the advert engagement, in particular the prices and terms, in the strictest confidence. This shall not apply should a disclosure be required by law, should this be ordered by a court or the authorities or should this be required in order to assert, before a court, one's rights against the respective other contracting party.