

# **General Terms and Conditions for Advertisements/Advertising Material in Magazine and Online Media**

## **I. General Terms and Conditions**

### **1. Application/Scope**

1.1 These General Terms and Conditions (GTC) shall be valid in the version valid at the time of placing the order for all business relations between atlas Verlag GmbH (publisher) and the person or company placing the order, hereinafter referred to as "advertiser".

1.2 Conflicting or deviating Terms and Conditions by the advertiser shall not apply, even if they have not been explicitly excluded.

### **2. Terminology**

2.1 „Advertising Material“ refers to all advertising material which has been submitted to the publisher or placed at his disposal in any other way by the advertiser.

2.2 „Advertiser“ refers to the individual or legal entity placing the order to publish advertising material. A joint discount for companies belonging to the same group requires the written proof of group status in advance as well as the explicit written consent of the publisher, whereby group status means an equity-based share of at least 50%.

### **3. Conclusion of the Contract**

3.1 The contract on the publication of the advertising material shall be regarded as concluded, when the publisher confirms in writing or the advertising material is published. In the case of a binding offer by the publisher, upon the declaration of acceptance by the advertiser.

3.2 If the advertiser is an agency, the contract shall be concluded with the agency, unless otherwise stipulated. The publisher shall have the right to submit a confirmation to the party instructing the agency.

3.3 Placing of the order and order confirmation can also be effected via the OBS online booking system (see information at [www.obs-portal.de](http://www.obs-portal.de)).

3.4 Orders for advertising material which shall exclusively be published in certain numbers, certain issues or certain places, have to be submitted to the publisher at such an early stage that the publisher is still able to confirm the feasibility to the advertiser before the closing date. Advertisements belonging to a certain category shall be published in the respective section.

3.5 A joint discount for page advertising material and millimeter advertising material shall be excluded.

3.6 An exclusion of advertising material by competitors of the advertiser from publications shall require an especially issued, specific confirmation by the publisher.

### **4. Submission of the Advertising Media**

4.1 The advertiser submits the advertising material in digital form. The advertiser shall be solely responsible for its timely delivery and suitability for publishing. In order to avoid variations in colour, the advertiser shall also submit a colour proof on paper to the publisher.

4.2 Unless otherwise provided, the transfer of digital formats shall be effected via the DUON portal ([www.duon-portal.de](http://www.duon-portal.de)).

4.3 The cost of changes requested by the advertiser or changes within his responsibility shall be borne by the advertiser.

4.4 Loose magazine inserts have to be with the publisher 14 days prior to the insertion date.

## **5. Publisher's Right of Refusal**

5.1 The publisher shall have the right to refuse the publication of advertising materials. This shall especially apply if the advertising material breaches laws or regulations by authorities, if its content has been objected to by the Deutscher Werberat *German Advertising Council* in a complaints procedure or if its publication restricts or infringes rights of third parties or interests of the publisher due to its contents, layout, origin or technical form or if its publication is unacceptable for the publisher for other reasons.

5.2 Advertising material which contains advertising by third parties or for third parties (cooperative advertising) requires a prior confirmation by the publisher, issued separately and exclusively.

## **6. Publication of the Advertising Material**

6.1 The publication for specific dates or in specific places requires a separate, explicit agreement. The respective orders have to be received by the publisher at such an early date that he shall still be able before the closing date to examine these materials and inform the advertiser with regard to their feasibility.

6.2 Without special agreement the publisher shall be entitled, but not obliged to publish the advertising material in electronic issues.

6.3 For the publication in electronic issues, the publisher shall be entitled to adjust the advertising materials to the respective requirements of the electronic issues, including the selection of equivalent placements. If the advertiser wishes to exclude deviations, it shall be up to the advertiser to request the necessary specifications from the publisher.

6.4. In cases of doubt, the publisher shall determine the size of the publication at his discretion.

## **7. Transfer of Rights**

Upon transfer of the advertising material, the advertiser grants the non-exclusive, unrestricted right in terms of territory, period of time and content to the publisher of using the advertising material – including protected features like logos and brands – completely or in part in tangible or intangible form in all ways of usage. This shall especially include the right, linked to the purpose of publication by the publisher, to edit the advertising material fully or in part, to multiply it, distribute it or publicly present it on the publisher's websites, each including its use for advertising purposes for the publication by the publisher and permanent archiving or publishing from the archive of the publisher (Right of editing, reproduction and circulation as well as the right to publish).

## **8. Advertiser's Liability**

8.1. The advertiser assures and guarantees upon submitting the advertising material – irrespective of its form or content – that it shall not infringe any valid law, that is not banned by law or authorities or violates public decency, does not infringe any rights of third parties, is

not pornographic, insulting, threatening, offensive, vulgar, racist, discriminating or objectionable in any other way, does not violate any youth protection guidelines and cannot be assessed as abuse.

8.2. With the transfer of the advertising material the advertiser especially assures and guarantees the publisher that the material is fully at his disposal regarding the publisher, above all within the scope of the transfer of rights in accordance with item 7, that he can pass it onto the publisher and that the advertising material does not infringe or break any third party rights, especially the right to one's own image, personality rights, (e.g. right to use a name), right to signs/marks (trade-mark right), other intellectual property rights and/or the copyright or related rights.

8.3. The advertiser assures that he shall sufficiently mark advertising material which corresponds to the editorial layout of the publisher or advertising material edited by the publisher with the word „advertisement“.

8.4. In case an advertiser has already received a warning regarding certain advertising material or is being warned and in case the advertiser has already issued a declaration to cease and desist or is issuing it, the advertiser shall inform the publisher immediately. If the advertiser omits to do so, the publisher shall not be held liable for the publication of the advertising material in question or the damage resulting from it.

8.5. The advertiser assures that the files submitted by him to the publisher shall be free of computer viruses and that he is using the standard anti-virus programmes for this purpose which have to correspond to the latest technical standard. If the publisher should detect such a cause of damage, the publisher shall be entitled to not use this file or delete it. The advertiser shall not be able to make any claims in this context, especially demand damages and the publisher shall also have the right to demand payment in full.

8.6. In case the advertiser violates the assurances or obligations named in the before items, especially in case third parties should state their claims against the publisher, as outlined in the before items, the advertiser shall fully indemnify the publisher – including the costs for legal defence or the costs of rectifying of a damage.

8.7. In case the advertiser breaches his duty to cooperate and the order is therefore not carried out or not carried out correctly, the publisher shall retain his claim regarding full payment. A breach of duty to cooperate is especially the case, if the advertiser does not submit the advertising material to the publisher in time, if the material is incomplete, if it is faulty or not correctly labeled.

## **9. Publisher's Liability**

9.1. Publisher's liability shall be excluded in cases of slightly negligent breaches of duty, as far as these breaches of duty do not concern duties essential to the contract or life, health or body or claims in accordance with product liability law. This shall apply correspondingly to breaches of duty by employees or agents of the publisher.

9.2. In conformity with the above paragraph, the publisher shall especially not be held liable for advertising material transferred by the advertiser or their contents, above all for the completeness or correctness of these contents with regard to their content. Furthermore the publisher shall not be liable for advertiser's disadvantages arising from temporary unavailability, the loss of data or similar technical problems. Accordingly, the publisher shall not be obliged to legally verify the advertising material and publisher's liability for system-related failures, interruptions and or interferences of data transfer shall be especially excluded.

9.3. In conformity with the above paragraphs, the publisher shall only be liable in cases of simple negligence, if an essential duty to the contract has been violated, a guarantee has been given or in cases of willful deceit. Liability in these cases shall be limited to typical foreseeable damage and as far as liability for indirect damage, damage as consequence of a defect or loss of profit has been excluded.

9.4. In conformity with the items above, all claims arising against the publisher from contractual breach of duty shall become invalid within a year from the commencement of the statutory period of limitation.

## **10. Proofs, Warranty**

10.1. Proofs are only delivered if expressly requested by the advertiser. In this case the advertiser shall be responsible for the correctness of the returned proofs. The publisher shall only consider those corrections of errors which he has been informed about by the advertiser within the deadline set by the publisher, when sending the proof.

10.2. The advertiser shall not be able to state claims regarding the publication of cancelled advertising materials.

10.3. In case the publication of the advertising material does not correspond to the characteristic details stipulated in the contract, the advertiser shall be entitled to a respective reduction in payment or a defect-free replacement publication, if the purpose of the publication of the advertising material has been compromised. The publisher can refuse the replacement publication, if this would entail an effort which would be in gross discrepancy to the interest in performance of the advertiser, regarding the extent of the damage and the principle of utmost good faith, or if this publication would only be possible with disproportionately high costs for the publisher. In case the publisher misses an acceptable deadline set for the replacement publication or if the replacement publication is again not without defect, the advertiser shall have the right to reduce payment or cancel the contract. In case of insignificant defects in the publication, the cancellation of the contract shall be excluded.

10.4. Deviations in colour cannot form the basis for a warranty claim by the advertiser, unless the advertiser has submitted a colour proof on paper to the publisher in accordance with item 4.1.

10.5. The advertiser shall examine the publication of the advertising material immediately. If the advertiser runs a business within the meaning of the German Commercial Code (HGB), he has to lodge a complaint regarding the defect immediately following publication; otherwise claims based on defects shall be excluded, unless the defects are non-obvious, in which case a period of six months shall apply.

## **11. Payment, Delays in Payment**

11.1. If not agreed upon differently for specific cases, the advertiser has to pay the invoice within the deadline set.

11.2. The publisher shall reserve the right to demand payment in advance. This shall apply especially for first-time business relations with the advertiser.

11.3. Even throughout the term of a contract, the publisher shall be entitled, to base the publication of advertisements, regardless of publication dates agreed upon, on the payment in advance or the settlement of outstanding invoice payments, if the publisher has reasonable doubt regarding the advertiser's ability to pay.

11.4. In case of delays in payment by the advertiser, the former shall owe the publisher default interest in the amount of 8 percentage points above the respective basis interest rate. The publisher reserves the right to claim further damages incurred by delay. Furthermore the publisher shall have the right during the period of delay, to refrain from further execution of the current advertising order or from accepting further orders until payment of unpaid invoices is effected or to demand payment in advance for the rest of the advertising publications.

11.5. The advertiser shall only have the right to offset or claim a right of retention, if the counter-claim is undisputed or has been established by legal proceedings and is based on the same contract.

## **12. Prices, Changes in Price**

12.1. The prices stated shall be net prices – all prices require the adding of the currently applicable VAT rate, prescribed by law.

12.2. The publisher shall be entitled to change the prices with effect for the future at any time.

12.3. In the context of standing orders, without an agreement explicitly stating otherwise, changes in price become immediately effective. Additionally changes in prices shall become valid, if the publisher has informed the advertiser about them at least one month prior to the publication, in which case the advertiser shall have the right to withdraw from the contract, a right which can be exercised within 14 days following the receipt of the written notice of the change in price.

## **13. Duration**

13.1. The contract shall end with expiration of the duration agreed upon, without requiring any cancellation.

13.2. The right to terminate the contract for good cause remains untouched. Good cause would especially be the case, if a written warning has been issued against the publisher due to a publication of advertising material or if a provisional injunction has been obtained.

## **14. Third Parties**

The publisher shall have the right to employ the services of third parties to fulfill contractual duties.

## **15. Force Majeure, Discounts**

15.1. In case of disruptions in production or force majeure (e.g. industrial action, confiscation or the like), the publisher shall be entitled to claim payment in full for the publication of advertising material, if 80% of the circulation of the respective publication sold on average in the past four quarters or distributed in another way have been delivered by the publisher. In case of fewer deliveries, the invoice amount shall be reduced, following the same ratio as guaranteed circulation to actually delivered circulation.

15.2. In case, the contract regarding the publication of advertising material is not fulfilled for reasons which both parties to the contract are not responsible for, the advertiser shall pay the difference between the discount granted and the discount corresponding to the actual quantity ordered to the publisher. Further legal duties shall remain untouched.

## **16. Non-Disclosure, Public Announcements, Data Protection**

16.1. The publisher shall be entitled to reveal the content of the advertising order to third parties engaged by him in accordance with item 14.

16.2. The parties to the contract shall treat the details of the contract, especially prices, discounts and other conditions as well as business secrets strictly confidential, unless otherwise agreed upon or in case a disclosure has been ordered by a court or authorities or becomes necessary for asserting legal rights or defending a right in court. This duty shall be permanent, exceeding the end of the contract period.

16.3. Public announcements, especially press releases, regarding all circumstances of the business relationship between the publisher and the advertiser shall require a prior release by the publisher, issued explicitly.

16.4. The advertiser shall undertake to keep to the currently valid regulations prescribed by law, regarding data protection and the protection of the secrecy of telecommunication and to oblige his employees and agents to do the same.

## **17. Proof of Publication of Advertising Material**

If requested, the publisher shall send proof of the publication of advertising material together with the invoice. Depending on the type and extent of the order, cutouts of advertisements, tear sheets, screenshots or whole voucher copies are supplied. If such a voucher can no longer be procured, it shall be replaced by a legally binding document by the publisher confirming the publication.

## **18. Final Agreements**

18.1. Further Terms and Conditions of the publisher shall apply – in accordance with item 1.2 – and supplement these General Terms and Conditions, where appropriate.

18.2. Changes of the General Terms and Conditions by the publisher shall be considered as accepted by the advertiser, if he does not object within a month from the information about the change made. Additionally changes or amendments to these General Terms and Conditions, including the waiver of this requirement, shall require the text form (§126 b BGB *German Civil Code*), as far as written form (§126 BGB *German Civil Code*) has not been stipulated.

18.3. For all relations between publisher and the advertiser, the sole place of execution and place of jurisdiction for all claims – as far as legally valid – shall be the Amtsgericht (local court) Muenchen or the Landgericht ( regional court) Muenchen I.

18.4. Contractual language shall be German. The laws of the Federal Republic of Germany shall apply exclusively, excluding UN purchase law/CISG.

18.5. If individual clauses of these General Terms and Conditions become invalid and/or void, the validity of the rest of the clauses remains untouched. Invalid and/or void clauses shall be replaced in such a way that the economic aim is achieved. This shall also apply for the filling of gaps in the General Terms and Conditions.

## **II. Special Conditions for Online Media**

### **1. Terminology**

„Advertising material“ can consist of images, moving images (e.g. video film), sound sequences or sensitive areas which, when clicked upon, create a link with an internet address or with other data, or it can consist of individual segments.

## **2. Conclusion of the Contract**

2.1. In case the parties should agree upon a total advertising volume, the publisher shall coordinate the extent and the dates for publishing the advertising material, depending on availability, with the advertiser. In case of doubt, the publisher shall decide at his reasonable discretion.

2.2. The advertiser shall be obliged to maintain the websites linked or to be linked with the advertising material.

## **3. Publication of the Advertising Material**

3.1. If not agreed upon otherwise, the publisher shall have a right to postpone with regard to the publication of advertising material, as well as a right to change the surrounding area of the advertising publication, including the page structure or title, unless this leads to unreasonable interference with the purpose pursued with the publication of the advertising material.

3.2. As far as not agreed upon otherwise, the publisher shall publish the advertising material during the period booked or until the media volume booked has been achieved.

## **4. Cancellation of an Order**

4.1. The advertiser can cancel the order prior to the publication of the advertising material. The cancellation has to be submitted to the publisher in writing. If the cancellation does not take place three weeks before the publication agreed upon at the latest, the advertiser shall be obliged to pay 30% of the net order volume to the publisher, the decisive factor being the receipt of the letter of cancellation by the publisher. If the advertiser does not run a business within the meaning of the German Commercial Code (HGB), he shall retain the right to proof a lesser damage.

4.2. If the publication of the advertising material has already begun, a cancellation shall be excluded.

## **5. Duration**

If not otherwise agreed upon, the advertiser can only demand the publication of each advertising material within half a year from conclusion of the contract. If it is not demanded in time, the publisher shall be free of his duty to publish and shall also retain his claim to payment.

## **6. Data Protection**

6.1. The advertiser assures that he will adhere to the stipulations of *Telemediengesetz* *Telemédia Act* or the *Bundesdatenschutzgesetz* *Federal Data Protection Law* when collecting, processing or using personal data and that he will also oblige his employees, agents or external system operators to do so.

6.2. The advertiser assures that he shall only analyze the data generated in connection with the publication of the advertising material in anonymised form and that he shall refrain from any further use or from passing it onto third parties.

6.3. In case the advertiser shall violate one of the assurances named in the above items, the advertiser shall fully indemnify the publisher – including the costs of legal defence or costs incurred when rectifying a damage.

We are neither willing nor obliged to participate in a dispute settlement procedure before a consumer conciliation board

General Terms and Conditions, as at: January 2017